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WASHINGTON, DC

[Two Sessions]

WHEN: January 27, 1998 at 9:00 am, and February 17, 1998 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street NW.,
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids

Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 63, No. 4

Wednesday, January 7, 1998

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV98–925–2 IFR]

Grapes Grown in a Designated Area of Southeastern California; Revision to Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the container requirements currently prescribed under the California grape marketing order. The marketing order regulates the handling of grapes grown in a designated area of southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). This rule revises the dimensions of three containers currently authorized for use by grape handlers regulated under the marketing order, adds two new containers, and makes several conforming and formatting changes. This revision to container requirements will bring the container requirements into conformity with those recently adopted by the State of California, will address the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers.

DATES: Effective on January 8, 1998; comments must be received by March 9, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906, or George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR Part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ‘‘order.’’ The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ‘‘Act.’’

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule modifies language in § 925.304 of the order's rules and regulations by revising the dimensions of three containers currently authorized for use by grape handlers, by adding two containers, and by making several conforming and formatting changes. The revision to container requirements in § 925.304(b) will bring the container requirements into conformity with those recently adopted by the State of California, will address the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers. In addition, this rule also will change a California Department of Food and Agriculture (CDFA) reference from ‘‘California Administrative Code (Title 3)’’ to ‘‘Title 3: California Code of Regulations’’ (CCR) in paragraphs (a), (b), and (f) of § 925.304, will remove an incorrect CCR section number referenced in § 925.304(b), and add a new section number to that paragraph to conform with the State of California.

Section 925.52(a)(4) of the grape marketing order provides authority to regulate the size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's rules and regulations outlines container and pack requirements for grapes and requires such grapes to meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3).

Currently, § 925.304(b)(1)(i) through (b)(1)(ix) of the order's rules and regulations authorize eight containers (28, 38J, 38K, 38Q, 38R, 38S, 38T, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3) and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Several years ago, the California Table Grape Commission (Commission) funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. Dr. Shorey looked at multiple varieties of grapes grown in California, packed in cartons of a wide variety of materials, dimensions, and packing depths. He monitored numerous shipments from the field to the grocery store. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48-x 40-inch pallets and that container minimum net weights should be reduced by 2 pounds.

Based on these conclusions, the Committee recommended and the Secretary approved in March 1996 (61 FR 11129, March 19, 1996) reducing the minimum net weight requirements, and adding the 38S and 38T containers to enhance the deliverability of grapes.

Since that time, the CDFA has published several amendments to the CCR which added the 38U and 38V containers. It is noted that the dimensions of the 38Q, 38R, and 38T authorized in § 925.304(b)(1)(iv), (v), and (vii) do not conform to those adopted by the State of California and they should. The comparisons below for these three containers are based on the State of California dimensions, not those specified in § 925.304(b).

The Committee met on November 12, 1997, and unanimously recommended modifying the language in § 925.304 of the order's administrative rules and regulations. The Committee recommended the following changes to Section 925.304(b):

(1) That the width of the 38Q container be decreased from 11½ inches (inside) to 11¼ inches (inside), and that the depth be decreased from 6 ¾ inches (inside) to 6¼ inches (inside);

(2) That the width of the 38R container be expanded from 15¾ inches (outside) to 15¾ to 16 inches (outside), and that the length be expanded from 19¹¹⁄₁₆ inches (outside) to 19¹¹⁄₁₆ to 20 inches (outside);

(3) That the depth of the 38T container be decreased from 6⅝ to 7½ inches (inside) to 5½ to 7½ inches (inside), that the width be expanded from 13⅛ inches (outside) to 13⅛ to 13⁵⁄₁₆ inches (outside), and that the length be expanded from 15⅞ inches (outside) to 15⁵⁄₁₆ to 16 inches (outside);

(4) That containers 38U and 38V, as defined in the CCR, be added to the regulations; and

(5) That several conforming and formatting changes be made to clarify which sections of the CCR pertain to grapes, and make the regulations more reader friendly. Specifically, reference to § 1380.19(14) needs to be removed because no such section exists. The incorrect section number was inadvertently placed in the regulation. The correct sections that apply to grapes are §§ 1380.14 and 1380.19(n). These sections need to be added to the regulation to make them consistent with the State of California's code. In addition, the authorized containers and dimensions are listed in chart form, rather than narrative form.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 27 handlers of California grapes subject to regulation under the order and approximately 80 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Ten of the 27 handlers subject to regulation have annual grape sales of at least $5,000,000, excluding receipts from any other sources. In addition, 70 of the 80 producers subject to regulation have annual sales of at least $500,000 and the remaining 10 producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of handlers and a minority of producers are classified as small entities.

This rule modifies language in § 925.304 of the order's rules and regulations by revising the dimensions of three containers currently authorized for use by grape handlers, by adding two containers, and by making several conforming and formatting changes. The revision to container requirements in § 925.304(b) will bring the container requirements into conformity with those recently adopted by the State of California, will address the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers. In addition, this rule will also change a California Department of Food and Agriculture (CDFA) reference from ''California Administrative Code (Title 3)'' to ''Title 3: California Code of Regulations'' (CCR) in paragraphs (a), (b), and (f) of § 925.304, will remove an incorrect CCR section number referenced in § 925.304(b), and add a new section number to that paragraph to conform with the State of California.

Section 925.52(a)(4) of the grape marketing order provides authority for size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's rules and regulations outlines container and pack requirements for grapes and requires such grapes to meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3).

Currently, § 925.304(b)(1)(i) through (b)(1)(ix) of the order's rules and regulations authorize eight containers (28, 38J, 38K, 38Q, 38R, 38S, 38T, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3) and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Several years ago, the Commission funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural

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Based on these conclusions, the Committee recommended and the Secretary approved reducing the minimum net weight requirements, and adding the 38S and 38T containers in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, the CDFA has published several amendments to the CCR which added the 38U and 38V containers. It is noted that the dimensions of the 38Q, 38R, and 38T authorized in § 925.304(b)(1)(iv), (v), and (vii) do not conform to those adopted by the State of California, and they should. The comparisons below for these three containers are based on the State of California dimensions, not those specified in § 925.304(b).

The Committee met on November 12, 1997, and unanimously recommended modifying the language in § 925.304 of the order's administrative rules and regulations. The Committee recommended the following changes to Section 925.304(b):

(1) That the width of the 38Q container be decreased from 11½ inches (inside) to 11¼ inches (inside), and that the depth be decreased from 6¾ inches (inside) to 6¼ inches (inside);

(2) That the width of the 38R container be expanded from 15¾ inches (outside) to 15¾ to 16 inches (outside), and that the length be expanded from 19 11/16 inches (outside) to 19 11/16 to 20 inches (outside);

(3) That the depth of the 38T container be decreased from 6⅝ to 7½ inches (inside) to 5½ to 7½ inches (inside), that the width be expanded from 13⅛ inches (outside) to 13⅛ to 13 5/16 inches (outside), and that the length be expanded from 15⅞ inches (outside) to 15 5/16 to 16 inches (outside);

(4) That containers 38U and 38V, as defined in the CCR, be added to the regulations; and

(5) That several administrative changes be made to clarify which sections of the CCR pertain to grapes. Specifically, § 1380.19(14) needs to be removed and §§ 1380.14 and 1380.19(n), need to be added.

Imported grapes will not be affected by this rule.

This rule needs to be effective by February 1998 as handlers will need to order lugs in preparation for the grape harvest which begins the end of April or early May.

At the meeting, the Committee discussed the impact of these revisions on handlers and producers in terms of cost. The new width and length dimensions for the 38R and 38T containers listed in the marketing order will fit within the dimensions for the new 38R and 38T containers as defined in the CCR. Therefore, handlers and producers will be able to continue using their current supply of 38R and 38T containers or purchase the new containers. This should have minimal impact on the industry as the cost for the new containers is expected to be less than the 38R and 38T containers utilized last fiscal period.

The 38Q container depth and width dimensions listed in the marketing order will not fit within the new depth and width dimensions for the new 38Q container as defined in the CCR. Therefore, handlers will need to utilize new containers. The Committee surveyed handlers and determined that none have stocks of 38Q containers. According to industry members, the new 38Q containers will cost handlers $0.20 less per container. This cost savings will be passed on to producers.

The Committee estimates the 1998 crop will be approximately 8,000,000 lugs. It is estimated that 2 to 3% of the crop (160,000 to 240,000) lugs will be packed into 38Q containers. The Committee estimated that a minimal amount of grapes will be shipped in the new 38U and 38V containers this fiscal period, but determined that handlers should have these containers available for use.

The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this revision, including not revising the dimensions for the 38Q, 38R, and 38T containers and not adding the 38U and 38V containers, but determined that handlers and producers should benefit from this change. The new and revised containers, conform with California state requirements, which fit on the standard 48- × 40-inch pallet, will address the marketing and shipping needs of the grape industry, and will accommodate the reduced net weight requirements established by the industry in March 1996. Thus, the Committee members unanimously agreed that the 38Q, 38R, and 38T container dimensions should be revised, that the 38V and 38U containers should be added to containers authorized under the marketing order, and that conforming and formatting changes should be made to reflect the appropriate sections of the CCR.

This action will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 12, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 12 members, of which 8 are handlers and producers, 1 is a producer only, and 2 are handlers only. The twelfth Committee member is the public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Any comments received on this action will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements currently in effect for grapes grown in designated areas of southeastern California; (2) California grape handlers are aware of this action which was unanimously recommended by the Committee at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) California grape shipments begin approximately

April 20, 1998, and this rule needs to be in effect by February so containers can be ordered in time for harvest and shipment; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended to read as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 925, the words ''California Administrative Code (Title 3)'' are removed and the words ''Title 3: California Code of Regulations'' are added in their place everywhere they appear.

3. In § 925.304:

(A) Paragraph (b)(1) introductory text is amended by removing the number ''1380.19(14)'' and adding in its place the phrase ''1380.14, and 1380.19(n)'', and

(B) Paragraphs (b)(1)(i) through (vii) are removed and paragraphs (b)(1)(viii) and (ix) are redesignated as paragraphs (b)(1)(ii) and (b)(1)(iii) and a new paragraph (b)(1)(i) is added to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(b) * * *

(1) * * *

(i)

CONTAINER DESCRIPTIONS IN INCHES

Container	Depth	Width	Length
28 Sawdust Pack	7¾ (inside)	14$\frac{15}{16}$ (inside)	18⅝ (inside).
38J Polystyrene Lug	6¾ (inside)	12½ (inside)	15⅜ (inside).
38K Standard Grape	4½ to 8½ (inside)	13½ to 14½ (outside)	16⅝ to 17½ (outside).
38Q Polystyrene Lug	6¼ to 8¼ (inside)	11¼ (inside)	18⅛ (inside).
38R Grape Lug	4 to 7 (inside)	15¾ to 16 (outside)	19$\frac{11}{16}$ to 20 (outside).
38S Grape Lug	5 to 9 (inside)	11$\frac{11}{16}$ to 12 (outside)	19$\frac{11}{16}$ to 20 (outside).
38T Grape Lug	5½ to 7½ (inside)	13⅛ to 13$\frac{15}{16}$ (outside)	15$\frac{5}{16}$ to 16 (outside).
38U Grape Lug	6$\frac{3}{16}$ to 7 (inside)	13$\frac{11}{16}$ (outside)	20½ (outside).
38 V Grape Lug	5 ¾ (inside)	14 (outside)	16 (outside).

* * * * *

Dated: December 30, 1997.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–284 Filed 1–6–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–333–AD; Amendment 39–10272; AD 98–01–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to instruct the flightcrew to crosscheck certain primary power setting parameters of the Thrust Control Computer (TCC) against tables of these values; and apply corrective action, if necessary. This amendment also provides for optional terminating action for the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to ensure that the flightcrew is provided with procedures for crosschecking and correcting certain primary power setting parameters of the TCC; incorrect parameters could result in insufficient thrust being applied during takeoff.

DATES: Effective January 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that, in three instances, incorrect primary power setting parameters [N1 rotor speed or engine pressure ratio (EPR)] have been observed on airplanes in service. These incorrect parameters have been attributed to inaccurate data computations by the Thrust Control Computer (TCC), due to electrical power transients occurring during the engine startup sequence. Incorrect primary power setting parameters in the TCC, if not corrected, could result in insufficient thrust being applied during takeoff.

Explanation of Relevant Service Information

Airbus has issued A300–600 Flight Manual Temporary Revisions 4.03.00/18 and 4.03.00/19; and A310 Flight Manual Temporary Revisions 4.03.00/20 and

4.03.00/21; all dated November 4, 1996. These temporary revisions describe procedures for crosschecking the primary power setting parameters (N1 or EPR) of the TCC against tables of these values given in the Airplane Flight Manual (AFM); and resetting the TCC, if necessary.

Airbus also has issued service bulletins which describe procedures for modification of the TCC on certain airplanes, to prevent its sensitivity to electrical power transients. Accomplishment of the modification eliminates the need for the AFM limitation. The modification of the TCC varies depending on the airplane model and engine configuration, as specified in each Airbus service bulletin below:

- A310–22–2025, dated April 18, 1989;
- A310–22–2027, dated June 8, 1990;
- A310–22–2031, dated September 2, 1991;
- A310–22–2035, Revision 1, dated July 13, 1994;
- A300–22–6010, dated April 18, 1989;
- A300–22–6011, dated June 8, 1990; and
- A300–22–6017, dated September 2, 1991.

The DGAC classified these AFM temporary revisions and service bulletins as mandatory and issued French airworthiness directive 97–110–218(B), dated May 7, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure that the flightcrew is provided with procedures for crosschecking and correcting certain primary power setting parameters of the TCC; incorrect parameters could result in insufficient thrust being applied during takeoff. This AD requires revising the Limitations Section of the FAA-approved AFM by incorporating the previously described temporary AFM revisions, as applicable. This AD also provides for optional terminating action for the AFM revisions.

Interim Action

This AD is considered to be interim action. While the French airworthiness directive also requires modification of the TCC on certain A310 and A300–600 series airplanes, in accordance with the previously described service bulletins, this AD provides for optional modification of the TCC. The FAA is currently considering requiring modification of the TCC. However, the planned compliance time is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–333–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–01–09 Airbus Industrie: Amendment 39–10272. Docket 97–NM–333–AD.

Applicability: Model A310 and A300–600 series airplanes equipped with General Electric CF6–80C2 engines on which Airbus Modification 7174, 7588, or 8246 has not been accomplished; and Model A310 and A300–600 series airplanes equipped with Pratt & Whitney PW 4000 engines on which Airbus Modification 7694 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is provided with procedures for crosschecking and correcting certain primary power setting parameters of the Thrust Control Computer (TCC),accomplish the following:

(a) Within 15 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of A300–600 or A310 Flight Manual Temporary Revision 4.03.00/18, 4.03.00/19, 4.03.00/20, or 4.03.00/21, all dated November 4, 1996; as applicable; into the AFM.

Note 2: When the temporary revision specified in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in the applicable temporary revision cited in paragraph (a).

(b) Accomplishment of modification of the TCC in accordance with the applicable Airbus service bulletins specified below constitutes terminating action for the requirement of paragraph (a) of this AD:

- A310–22–2025, dated April 18, 1989;
- A310–22–2027, dated June 8, 1990;
- A310–22–2031, dated September 2, 1991;
- A310–22–2035, Revision 1, dated July 13, 1994;
- A300–22–6010, dated April 18, 1989;
- A300–22–6011, dated June 8, 1990;
- A300–22–6017, dated September 2, 1991.

After the modification has been accomplished, the Temporary AFM Revision may be removed from the AFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The AFM revision shall be done in accordance with Airbus A300–600 Flight Manual Temporary Revision 4.03.00/18, dated November 4, 1996; Airbus Model A300–600 Flight Manual Temporary Revision 4.03.00/19, dated November 4, 1996; Airbus A310 Flight Manual Temporary Revision 4.03.00/20, dated November 4, 1996; or Airbus A310 Flight Manual Temporary Revision 4.03.00/21, dated November 4, 1996; as applicable. The modification, if accomplished, shall be done in accordance with Airbus Service Bulletin A310–22–2025, dated April 18, 1989; Airbus Service Bulletin A310–22–2027, dated June 8, 1990; Airbus Service Bulletin A310–22–2031, dated September 2, 1991; Airbus Service Bulletin A310–22–2035, Revision 1, dated July 13, 1994; Airbus Service Bulletin A300–22–6010, dated April 18, 1989; Airbus Service Bulletin A300–22–6011, dated June 8, 1990; or Airbus Service Bulletin A300–22–6017, dated September 2, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 97–110–218(B), dated May 7, 1997.

(f) This amendment becomes effective on January 22, 1998.

Issued in Renton, Washington, on December 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–115 Filed 1–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 28095; SFAR No. 73–1]

RIN 2120–AG47

Robinson R–22/R–44 Special Training And Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule extends the expiration date of Special Federal Aviation Regulation (SFAR) 73, and amends the special training and experience requirements for pilots operating the Robinson R–22 or R–44 helicopters in order to maintain the safe operation of Robinson helicopters. It also requires special training and experience requirements for certified flight instructors conducting student instruction or flight reviews. The purpose of this action is to maintain awareness of and training for the potential hazards of particular flight operations needed for the continued safe operation of Robinson helicopters.

EFFECTIVE DATE: December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. O'Haver, Operations Branch, AFS–820, General Aviation and Commercial Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7031.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board (telephone: 703–321–3339), the Federal Register's electronic bulletin board (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board (telephone: 800–322–2722 or 202–267–5948).

Internet users may access the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/su__docs to download recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must reference the amendment number of this final rule.

Persons interested in being placed on the mailing list for future rules should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page http://www.faa.gov/avr/arm/sbrefa.htm, by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructors. Particular requirements for pilots and flight instructors in rotorcraft are found in subparts C through G, and appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, the FAA determined in 1995 that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 helicopters.

The R–22 is a 2-seat, reciprocating engine-powered helicopter that is frequently used as low-cost initial student training aircraft. The R–44 is a 4-seat helicopter with similar operating characteristics and design features of the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Its small size and relatively low operating costs result in its use as a training or small utility aircraft, and its operation by a significant population of relatively inexperienced helicopter pilots. However, certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

The FAA found that the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979; however, the R–22 has had a high number of fatal accidents due to main rotor/airframe contact when compared to other piston powered helicopters. Overall, since the R–22 was certificated, there have been 339 accidents in the U.S. involving R–22's. Many of these accidents have been attributed to pilot performance or inexperience, leading to low rotor revolutions per minute (RPM) or low ''G'' conditions that resulted in mast bumping and/or main rotor-airframe contact accidents.

In its analysis of accident data, the FAA has found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. The additional pilot training, originally established by SFAR 73, continues to be needed for the safe operation of these helicopters.

Previous Regulatory Action

To address the accident causes, on March 1, 1995, the FAA published SFAR 73 (60 FR 11256) which required certain additional experience and training to perform pilot-in-command (PIC) and/or certified flight instructor (CFI) duties. SFAR 73 was issued on an emergency basis without the usual public notice and comment; however, the FAA sought comment on the final SFAR.

Since the issuance of SFAR 73, which expires on December 31, 1997, no accidents have occurred related to low rotor RPM, low g maneuvers, and main rotor/airframe contact. Therefore, on November 21, 1997 (62 FR 62486), the FAA published a Notice of Proposed Rulemaking (NPRM) No. 97–15 which proposed to extend the provisions of SFAR 73 until December 31, 2002, with a minor amendment. As noted above, the preamble to Notice No. 97–15 discussed the 46 comments that the FAA had received after the issuance of SFAR 73 in 1995 and those comments were considered by the FAA in the issuance of this rule.

The Amendment

As previously noted, since the issuance of SFAR 73, there has been a dramatic drop in the accident rate of Robinson helicopters associated with low ''G'' maneuvers, low motor rpm and main rotor/airframe contact. Also in the interim, the FAA has taken steps to improve the airworthiness of the R–22 and R–44 through the issuance of a number of airworthiness directives. Both of these factors support the FAA's proposal to extend the provisions of SFAR 73.

The comments received on SFAR 73 demonstrated that there is a general consensus that the required training is beneficial to those operating Robinson helicopters. Also, the ongoing increase of new rotary wing pilots supports continuing the requirements of SFAR 73.

This rule also contains a minor amendment to SFAR 73 to clarify paragraph 2(b)(5) regarding the instructor experience required to conduct training in either the R–22 or R–44. The FAA has recognized that the R–44, which was not operated in the U.S. in large numbers when SFAR 73 was originally promulgated, is being operated in greater numbers now. The FAA has also recognized that the R–44 is a more stable aircraft than the R–22. Therefore, the FAA is allowing the crediting of up to 25 flight hours acquired in the R–22 helicopter towards the 50 flight hour experience requirements of paragraph 2(b)(2)(i) for the R–44, and up to 5 hours of dual instruction received in the R–22 credited toward the 10 hour dual flight instruction requirement of 2(b)(2)(ii) for the R–44.

In addition, paragraph 2(b)(5)(ii) is clarified in this amendment. The FAA had receive many inquiries as to the intent of this paragraph. Individuals have mistaken the intent of the paragraph and had concluded that instructors may be endorsed to provide flight instruction in the R–22 or R–44 if they comply with paragraph 2(b)(1)(ii) or 2(b)(2)(ii) of the SFAR. It is contended that the reference in paragraph 2(b)(5)(ii) to the experience requirements of 2(b)(1)(i) or 2(b)(2)(i) includes the ''or;'' at the end of the sentence.

This was not the FAA's intent; paragraph 2(b)(5)(ii) separately refers to the R–22 and the R–44. However to avoid any future confusion, the FAA is changing paragraph 2(b)(5)(ii) to clarify the specific requirements.

As discussed in Notice No. 97–15, the FAA is also amending paragraphs 2(b)(1)(ii) and 2(b)(2)(ii) in response to a comment made by Robinson Helicopter Company (RHC) supported by 15 additional commenters on the original emergency SFAR. RHC proposed a reduction in the hours of dual instruction from 10 hours to 5 hours for those persons who had an experience level of more than 200 flight hours in helicopters.

Additionally, a clause stating the need for a flight instructor's endorsement prior to exercising the privileges of a pilot in command of an Robinson R–44 was inadvertently left out of the proposal to amend paragraph 2(b)(2)(ii). That requirement exists in the current SFAR was written; it's omission is considered minor and editorial in nature and had been corrected in this amendment.

Discussion of Comments

Fifty-six comments were received before the docket closed on December 22, 1997 on Notice No. 97–15. Of this total, 42 individual pilot commenters submitted identical letters supporting the position of the R–22/R–44 Operators & Pilots Association.

The identical pilot commenters express overall support of SFAR 73, citing various statistics documenting the reduced accident rate involving R–22 and R–44 helicopters since the SFAR has been in effect. While these commenters are in favor of continuing the mandated awareness training for all pilots of R–22 and R–44 helicopters, they recommend that ''mandated hourly flight requirements * * * be modified unless future fatal accident rates indicate otherwise.'' Specifically, these commenters recommend amending paragraph 2(b)(5)(ii) to read as follows:

''and for the R–22, has had at least 150 flight hours in an R–22 (or at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22), or for the R–44, has had at least 200 flight hours in helicopters, 50 flight hours of which were in the Robinson helicopters. Up to 25 flight hours of Robinson R–22 flight time may be credited toward the 50 hour requirement.''

The effect of the recommended change would be to reduce the total number of required flight hours for a qualified R–22 flight instructor from 200 flight hours to 150 flight hours if all 150 flight hours were in an R–22.

These commenters state that this change would enhance safety by ensuring that flight instructors operating in the R–22 have a greater number of flight hours in the same make and model of helicopter that they will be teaching in.

The FAA disagrees with this comment. As was stated in the preamble to SFAR 73 and the NPRM, the FAA is convinced a clear relationship exists between pilot inexperience in the R–22 and R–44 helicopter and main rotor/airframe contact accidents. In 23 of the 30 fatal accidents, the pilots apparently manipulating the controls have had less than 200 flight hours in the model of Robinson helicopter they were operating. The FAA has determined that 200 flight hours is needed for the safe operation of either helicopter.

One commenter (Rotorcraft, Inc.) states that SFAR 73 is an unfair burden on R–22/R–44 operators and should not be continued. This commenter states that SFAR 73 serves no safety function because the R–22/R–44 has been found to be the safest in the industry.

The FAA disagrees with this statement. Prior to the SFAR, there were 30 fatal accidents involving Robinson helicopters and low rotor RPM or ''low G'' maneuvers leading to main rotor/airframe contact. The R–22's and the R–44's two blade, low inertia, teetering rotor system (combined with a high tail mount position of the tail rotor) has repeatedly been involved in the type of accident which this SFAR is designed to address. The FAA determined that the additional special experience requirements and awareness training was necessary for safe operation of these helicopters as part of a comprehensive program that responded to the high number of accidents involving these helicopters. Other elements of the program included addressing design and operational issues that may have been contributing factors in some of these accidents. The FAA has determined that SFAR 73 is essential for the safe operation of the R–22 and R–44 helicopters.

Robinson Helicopter Company and Sky Helicopters support the proposed changes in SFAR 73 but strongly recommends that the same reasoning should be applied to the biennial flight review, which would then recognize flight review in the R–22 to be valid for flight in the R–44. These commenters and one other commenter also request that the requirements of the SFAR ''be reviewed and re-evaluated at least every two years so that any additional changes based upon experience may be promptly implemented.'' Thus, this commenter recommends that SFAR 73 should be extended until December 31, 1999, rather than 2002.

The FAA disagrees with the comment regarding biennial flight reviews. The requirements for the flight review in the R–22 helicopter were established by the R–22 Flight Standardization Board (FSB) Report, dated February 15, 1995. This report states in paragraph 8.2, ''All pilots who wish to act as pilot in command of a Robinson R–22 aircraft should complete a flight review as required by FAR Part 61.56 in a Robinson R–22 model helicopter.'' The FSB report for the R–44, also dated February 15, 1995, make similar statements regarding the completion of a flight review in a R–44 specifically.

The FAA disagrees with the recommendation for a shorter effective period. A longer effective period of the SFAR will allow for sufficient collection of data and analysis. But, as noted below, other safety authorities have stated that this SFAR should be made permanent. The FAA has determined that 5 years of data will more fully address both recommendations.

Another comment submitted by Robinson Helicopter Company's Engineering Department recommends simplification of the wording of the amendatory language in the proposal.

The FAA did not adopt this suggestion. The FAA reviewed the specific wording suggested and determined that the wording as written in the proposed rule was clear regarding the type of flight hours which can be credited toward the aeronautical experience for the R44, i.e. the creditable time must be in the R–22, not a helicopter other than the R–22.

Another comment by an individual helicopter pilot says that the SFAR has been successful in reducing fatal accidents in the R–22 and R–44, caused by the low RPM stalls and low G maneuvering, through increased pilot awareness training. The commenter states that this training will continue to be carried forward and that there is no longer a need for the SFAR, therefore it should not be renewed.

The FAA disagrees that this recommendation. The specific points made by this commenter are the precise reasons why the FAA will extend the SFAR so as to ensure that this training is given to new students entering the training population. The R–22's and R–44's accident record before and after this SFAR is strong evidence that a mandatory rule is needed for the continued safe operation of these helicopters.

Another individual helicopter pilot supports the annual awareness training required by the SFAR but believes that adding more restrictions (additional flight instruction hours) would increase the cost of flying Robinson helicopters, thereby discouraging people from flying these helicopters. This commenter says that the cost analysis in the proposal ''appears to be about 15–20% low for the available services in my area'' (Kansas). The commenter suggests not changing SFAR 73 for another year so that more data can be compiled.

For reasons discussed previously, the FAA has determined that the extension of the SFAR as amended is needed. Also, this amendment has not added any restrictions from the previous rule, but instead, has granted credit for specific experience in the R–22, thereby reducing the overall requirements for gaining a rating in both the R–22 and R–44. Therefore, this SFAR will not increase flight instruction hours.

Also, the Chairman of the National Transportation Safety Board (NTSB) filed a comment that concurred with the extension of the SFAR as proposed. He noted that the NTSB had made multiple recommendations to the FAA concerning the R–22 and R–44, and that the NTSB recommended the SFAR should be made permanent. The FAA agrees with the NTSB and most commenters that safety dictates that the SFAR should continue without lapse until December 31, 2002. Accordingly, this rule is to be effective in less than 30 days to prevent that lapse. As noted in the NPRM, the current SFAR expires on December 31, 1997 and such lapse would be detrimental to aviation safety.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

Information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0021.

Regulatory Evaluation Summary

Both the executive and legislative branches of government recognize that economic considerations are an important factor in establishing regulations. Executive Order 12866 signed by President Clinton on September 30, 1993 requires Federal agencies to assess both the costs and benefits of proposed regulations and, recognizing that some costs and benefits are difficult to quantify, propose or adopt regulations only upon a reasoned determination that the benefits of each regulation justify its costs. In addition, the Regulatory Flexibility Act of 1980 requires Federal agencies to determine whether or not proposed regulations are expected to have a significant economic impact on a substantial number of small entities, and, if so, examine feasible regulatory alternatives to minimize the economic burden on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of proposed regulations on international trade.

This section summarizes the FAA's economic and trade analyses, findings, and determinations in response to these requirements. The complete economic and trade analyses are contained in the docket.

Benefits

The benefits of the final rule will be a reduction of the number of fatal accidents that occur in Robinson helicopters associated with low ''G'' maneuvers that can result in main rotor contact with the airframe. The estimated reduction in the number of accidents is expected from the increased level of safety related to specific flight training and awareness training requirements for all individuals operating Robinson R–22 and R–44 aircraft.

Between the years 1985 and 1994 there were a total of 43 fatal accidents involving Robinson helicopters, resulting in 63 fatalities. Accidents due to main rotor contact with the airframe accounted for 16 of the 43, or approximately 37 percent of the total accidents. There were 26 fatalities (41 percent of all fatalities on Robinson helicopters) that resulted from those 16 accidents prior to the issuance of SFAR 73. Since the SFAR was issued in 1995, however, there have been no accidents or fatalities involving R–22 or R–44 aircraft associated with low ''G'' operations or main rotor contact with the airframe. Although there is not yet sufficient historical data to statistically demonstrate that the almost three year period of no fatal accidents of this type is a result of SFAR 73, it is the judgment of the FAA after reviewing all available information that this is the case.

Assuming that SFAR 73 is effective at preventing the above types of rotorcraft accidents, the FAA has estimated the benefit associated with preventing these accidents. A value of $2.7 million was applied to each statistical fatality avoided. This computation resulted in an estimate of approximately $35.1 million in five year casualty costs. Also, the estimated value of the 16 destroyed aircraft was $587,000. If this rulemaking helps prevent the recurrence of the 26 fatalities associated with low ''G'' maneuvers, then expected safety benefits will be approximately $35.7 million (present value, $29.3 million) over five years, in 1996 dollars.

Costs

In this analysis, the FAA has estimated the cost of the final rule over the five year period from 1998 through 2002. All of the costs incurred as a result of changes to existing training procedures will begin when the final rule becomes effective. Costs are computed in 1996 dollars and are discounted by seven percent.

The groups that incur costs from the final rule are rated pilots who aspire to be flight instructors or newly certificated flight instructors who desire to conduct student instruction or flight reviews in the Robinson model R–22 or R–44 helicopter. In addition, students that receive their instruction in the R–22 or R–44, such as pilots adding a rotorcraft rating and new rotorcraft students, will also incur costs from the final rule. All the cost estimates pertaining to the acquisition of a rotocraft category rating are based on the minimum times required to receive the category rating, as published in 14 CFR Part 61.

Flight Instructor Costs

Theoretically a flight instructor can acquire his or her certificate with as little as 50 hours of actual rotorcraft time and little more than 150 hours of total flight time. However, the SFAR established additional requirements for flight instructors who wish to continue to instruct or conduct flight reviews in a Robinson helicopter. These requirements were based on a combination of experience and training, which requires more than the minimum amount necessary for certification as an instructor. Further, additional flight evaluation criteria were established to ensure that the instructors are knowledgeable and competent to conduct the awareness and flight training that the FAA believes are necessary for Robinson helicopters. Therefore, no grandfathering was permitted for evaluators or flight instructors.

While it is still possible for an individual to obtain a flight instructor certificate for aircraft other than Robinson helicopters in the minimum time required, those aspiring a flight instructor certificate in the Robinson model helicopters will be required to have an additional 50 hours of flight time. However, because some flight experience requirements in the model R–22 also apply to flight experience requirements in the R–44, a credit of up to 25 flight hours acquired in the model R–22 helicopter can apply to the 50 flight hour experience requirement for the R–44.

For a rated pilot to become certificated as a flight instructor in the R–22, the pilot will need an additional 50 flight hours in the R–22. The cost of the additional flight hours in the R–22 at $150 a flight hour, equals $7,500 per person ($150 times 50 hours). Likewise, for a rated pilot to become certificated as a flight instructor in the R–44, the pilot will need an additional 50 flight hours in the R–44 (25 hours may be done in a R–22). The cost for flight hours in the R–44 is $300 a flight hour. The additional cost of $300 per flight hour for 25 hours in a R–44 and $150 per flight hour for 25 hours in a R–22, equals a total of $11,250 per person. However, for a person to become certificated as a flight instructor on both models of Robinson helicopters, the pilot will need 75 additional flight hours, 50 hours in the R–22 and 25 hours in the R–44. The added cost for 75 additional flight hours to become certificated in both the R–22 and the R–44 is $15,000 per person. The FAA assumes that a rated pilot seeking to become a flight instructor will want to be certificated on both models of Robinson helicopters; therefore, the FAA has based the cost estimate to become a flight instructor on the 75 additional flight hours.

The FAA believes that the number of individuals seeking a new flight instructor certificate for a specific Robinson model helicopter is small relative to the total of new flight instructor certificates issued. To estimate the number of people seeking a flight instructor certificate for the Robinson model helicopters, the FAA determined the ratio of rotorcraft-only certificates held to the total airmen certificates held (less student and glider-only certificates). The ratio was then applied to the change in flight instructor certificates between 1995 and 1996.

The FAA estimates that in 1996 there was the potential for 13 individuals seeking a rotorcraft a flight instructor certificate in a Robinson model helicopter, based on the minimum requirements for a helicopter only rating. The FAA assumes in this evaluation that all 13 of these individuals would want to qualify as flight instructors in Robinson model helicopters. Based on the addition of 75 flight hours at an added cost of $15,000 per individual, the total cost for 13 people seeking a rotorcraft only flight instructor certificate in a Robinson helicopter is approximately $189,000 annually. The estimated cost over the next five years is approximately $900,000 (present value, $800,000), in 1996 dollars.

Student Costs

The costs encompass two classes of students: (1) Pilots that currently have a class certificate who wish to add a rotorcraft rating, and (2) new students receiving rotorcraft-only training. However, to be included in the cost estimate, students (new students or those adding a rotorcraft rating) must be receiving instruction in the Robinson model R–22 or R–44 helicopter.

New students receiving instruction in the Robinson helicopters will be required to receive an additional five hours of dual instruction. Because the small size, low purchase price, and low maintenance costs make the R–22 attractive to flight schools, the FAA assumes that new students will receive their instruction in the Robinson model R–22 helicopter. The added cost per student, assuming $165 an hour for instruction in the R–22, will amount to $825 (5 hours times $165 an hour).

Estimation of the total added cost for all students receiving instruction in the Robinson helicopter was calculated in several steps. First, the FAA estimated the ratio of original rotorcraft certificates issued to original student certificates issued. That ratio was applied to the total student pilot certificates held in 1996, which produced an estimate of the number of student rotorcraft certificates held. The estimated student rotorcraft certificates held was multiplied by an estimate of the portion of new students receiving instruction on Robinson helicopters (about ⅔rds). That estimate was then applied to the added cost per student to derive the total added cost for all students.

The FAA estimates that approximately 3,300 new students will receive instruction in the Robinson R–22 model helicopter at an estimated cost of approximately $2.7 million annually. Total new student costs are approximately $13.5 million ($11.1 million, present value) over the next five years in 1996 dollars.

Although the FAA used a higher per hour estimate for dual instruction, the costs reflected above are still approximately $1.3 million less than reported in the NPRM, because more accurate data was supplied to the FAA regarding original rotorcraft pilot certificates issued. The updated data presented fewer original rotorcraft pilot certificates issued than what was used in the NPRM. Because there are few original rotorcraft pilot certificates issued, that lowers the ratio used as a component to calculate total added cost for all students, thereby lowering the cost estimate.

Pilots that have a current class certificate who wish to add a rotorcraft rating and receive instruction in the Robinson helicopters will be required to take an additional five hours of dual instruction the same as new students. However, unlike the new students, the FAA assumes that a portion of the pilots seeking to add a rotorcraft rating will receive instruction in the Robinson model R–44. Therefore, in addition to estimating the total number of pilots seeking to add a rotorcraft rating in Robinson helicopters in general, the FAA estimated the percentage of those seeking a rating only in the R–44.

Experienced pilots who wish to add a rotorcraft rating to a current class certificate could receive more advanced instruction, or instruction in more advanced equipment, than a new pilot. For example, they could receive instruction in a larger, more sophisticated turbine helicopter, or they could receive instruction to add the instrument rating to their class certicate. Therefore, the number of current pilots seeking to add a rotorcraft rating only in the Robinson models R–44 and R–22 was estimated by the FAA. First, to determine the number of rotorcraft ratings that apply only to the R–44, the FAA multiplied the ratio of R–44s to the helicopter fleet by the added rotorcraft ratings for 1996. To estimate the added cost of instruction in the R–44, the number of R–44 ratings was multiplied by the number of required added hours of instruction, and by the R–44 cost per hour.

Next, it was necessary to estimate the number of rotorcraft ratings that apply only to the R–22. As with the R–44, the added cost of the R–22 was estimated by applying the R–22 ratings to the added rotorcraft ratings for 1996. The number of R–22 ratings was multiplied by the number of added hours of instruction and by the R–22 cost per hour. Finally, the two products were added together to estimate the annual cost for pilots to add a rotorcraft rating using a Robinson helicopter.

The total additional cost to receive instruction in a Robinson helicopter for the purpose of adding a rotorcraft rating to a pilot certificate is approximately $90,000 annually. The estimated cost over the next five years is approximately $450,000 (present value, $369,000) in 1996 dollars.

Although the FAA used a higher per hour estimate for dual instruction, the costs reflected above are still approximately $1.8 million less than reported in the NPRM, because updated data, which presented fewer added rotorcraft ratings than what was used in the NPRM, was supplied to the FAA regarding added rotorcraft ratings. Because of the lower number of added rotorcraft ratings, ratios applied to the added rotorcraft ratings produced a lower cost estimate.

Cost Summary

The final rule will impose costs to the those receiving instruction in Robinson model R–22 and R–44 helicopters. Before they can be certificated, affected individuals will be required to receive additional model-specific training and experience for each model of Robinson helicopter. Individuals affected by the rule are rated pilots who aspire to be flight instructors or newly certificated flight instructors who desire to conduct student instruction or flight reviews in the Robinson model R–22 or R–44 helicopter, new rotorcraft students, and certificated pilots seeking to add a rotorcraft rating. Both the new student and the pilot seeking to add a rotorcraft rating must be receiving instruction in a Robinson helicopter to incur the added cost. The final rule will impose total estimated costs of approximately $14.9 million (present value, $12.2 million) over the next five years, in 1996 dollars.

All of the costs described in this analysis will be incurred voluntarily. These added costs are not being forced on any individual that wishes to receive rotorcraft training. If an individual wishes to avoid the additional costs of rotorcraft instruction delineated above, they can receive their instruction in a rotorcraft other than a Robinson model, and not incur any of the costs that are described in this analysis. However, they will not be certificated for Robinson model helicopters.

Comparison Of Costs And Benefits

The rule will require those who receive or provide instruction in a Robinson helicopter to incur additional costs related to specific flight training and awareness training. The addition of these requirements will impose costs of approximately $14.9 million (present value, $12.2 million) over five years in 1996 dollars. Benefits from the final rule will be a reduction in the number of fatal accidents that occur in Robinson helicopters associated with low ‘‘G’’ maneuvers that may result in main rotor/airframe contact. The reduction in the number of accidents is due to the increased level of safety due to specific flight training and awareness training requirements for all individuals operating Robinson R–22 and R–44 aircraft. If the final action prevents a repeat of the 26 fatalities that occurred during the past 10-year period, the estimated benefits will be $71.4 million ($50.1 million, present value). Since this SFAR will be in effect for only 5 years, the estimated benefits will be $35.7 million ($29.3 million, present value) for this rulemaking, resulting in benefits substantially exceeding costs.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that, whenever an agency publishes a general notice of final rulemaking, a regulatory flexibility analysis be done identifying the economic impact on small entities, and considering alternatives that may lessen those impacts if the final rule will have a significant economic impact on a substantial number of small entities.

This rule is to extend SFAR 73 published on March 1, 1995, which was issued on an emergency basis without the usual public notice period, but the FAA sought comments after issuance. No comments were received from small entities indicating that they suffered any adverse economic impact. The FAA again sought comments from small entities in the NPRM published November 21, 1997 to extend SFAR 73 until 2002. Again the FAA did not receive any comments from small entities indicating any adverse economic impact. Further, the SFAR is limited to experience and training requirements to perform pilot-in-command and certified flight instructor duties, thereby impacting individuals rather than entities. In view of all of the above, the FAA certifies that this final rule will not have a significant economic impact on any small entities.

International Trade Impact Statement

This final rule will only impose additional costs on those receiving instruction on Robinson helicopters. This rule will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

This final rule is not expected to impose a competitive disadvantage to either US air carriers doing business abroad or foreign air carriers doing business in the United States. This final rule extends the SFAR and is not expected to impose any additional competitive disadvantage over what has already been imposed by the original SFAR requiring additional training in the Robinson. This assessment is based on the fact that several other foreign countries have adopted most provisions of the SFAR and that the production and sale of Robinson helicopters has increased over the last two years.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ‘‘significant intergovernmental mandate.’’ A ‘‘significant intergovernmental mandate’’ under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulation herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Significance

This rule is not significant under Executive Order 12866, nor is it considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 61 of Title 14, Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Paragraphs 2(b)(2), 2(b)(5), and 3 of Special Federal Aviation Regulation (SFAR) No. 73 to part 61 are revised to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 73—Robinson R–22/R–44 Special Training and Experience Requirements

* * * * *

2. *Required training, aeronautical experience, endorsements, and flight review.*

* * * * *

(b) * * *

(2) No person may act as pilot in command of a Robinson R–44 unless that person—

(i) Has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–44. The pilot in command may credit up to 25 flight hours in the Robinson R–22 toward the 50 hour requirement in the Robinson R–44; or

(ii) Has had at least 10 hours dual instruction in a Robinson helicopter, at least 5 hours of which must have been accomplished in the Robinson R–44 helicopter and has received an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that the individual has been given the training required by this paragraph and is proficient to act as pilot in command of an R–44. Beginning 12 calendar months after the date of the endorsement, the individual may not act as pilot in command unless the individual has completed a flight review in a Robinson R–44 within the preceding 12 calendar months and obtained an endorsement for that flight review. The dual instruction must include at least the following abnormal and emergency procedures flight training—

(A) Enhanced training in autorotation procedures;

(B) Engine rotor RPM control without the use of the governor;

(C) Low rotor RPM recognition and recovery; and

(D) Effects of low G maneuvers and proper recovery procedures.

* * * * *

(5) No certificated flight instructor may provide instruction or conduct a flight review in a Robinson R–22 or R–44 unless that instructor—

(i) Completes the awareness training in paragraph 2(a) of this SFAR.

(ii) For the Robinson R–22, has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22, or for the Robinson R–44, has had at least 200 flight hours in helicopters, 50 flight hours of which were in Robinson helicopters. Up to 25 flight hours of Robinson R–22 flight time may be credited toward the 50 hour requirement.

(iii) Has completed flight training in a Robinson R–22, R–44, or both, on the following abnormal and emergency procedures—

(A) Enhanced training in autorotation procedures;

(B) Engine rotor RPM control without the use of the governor;

(C) Low rotor RPM recognition and recovery; and

(D) Effects of low G maneuvers and proper recovery procedures.

(iv) Has been authorized by endorsement from an FAA aviation safety inspector or authorized designated examiner that the instructor has completed the appropriate training, meets the experience requirements and has satisfactorily demonstrated an ability to provide instruction on the general subject areas of paragraph 2(a)(3) of this SFAR, and the flight training identified in paragraph 2(b)(5)(iii) of this SFAR.

* * * * *

3. *Expiration date.* This SFAR expires on December 31, 2002, unless sooner superceded or rescinded.

Issued in Washington, DC on December 31, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 98–317 Filed 1–2–98; 11:47 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29107; Amdt. No. 406]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulation (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAP's are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 2, 1998.

Quentin J. Smith, Jr.,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

Effective on Publication

New York, NY, John F. Kennedy Intl, VOR or GPS RWY 13L/13R, Amdt 18 Cancelled

New York, NY, John F. Kennedy Intl, VOR or FMS or GPS RWY 13L/13R, Amdt 18

[FR Doc. 98–322 Filed 1–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 285

[Docket No. 971231320–7320–01; I.D. 121697B]

RIN 0648-AK63

Atlantic Tuna Fisheries; Archival Tag Recovery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments

SUMMARY: NMFS issues this interim final rule to allow the retention, possession, and landing of Atlantic bluefin tunas (ABTs) in which an archival tag has been implanted. Data recovery from archival tags requires that fish be harvested and the tag removed. In the event a fish with an archival tag is captured, applicable regulations could require its immediate release under certain conditions, such as the closure of the ABT season for a permit category. In order to provide for maximum likelihood of data recovery, NMFS exempts the harvest of fish with archival tags from applicable release requirements provided NMFS is notified prior to, or at the time of, landing and, as instructed, the tag is removed and returned to NMFS or the fish is made available so that it may be inspected and the tag recovered.

DATES: The interim final rule is effective December 31, 1997. Comments must be received on or before January 30, 1998.

ADDRESSES: Comments on the interim final rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this interim final rule should be sent to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301-713-2347; Buck Sutter, 813–570–5447; or Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Under the Atlantic Tunas Convention Act of 1975 (ATCA) (16 U.S.C. 971 *et seq.*), the Secretary of Commerce (Secretary) is authorized to promulgate regulations to implement recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue such regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries (AA), NOAA. Section 971d(c)(3) of title 16, United States Code, provides the statutory authority to require the collection of information necessary to implement the recommendations of ICCAT.

As a member nation of ICCAT, the United States is required to take part in the collection of biological statistics for research purposes. In addition to this requirement, the United States, as a member nation fishing for ABT in the Atlantic Ocean, must abide by the specific quota assigned to it by ICCAT. Through quota management, ICCAT is furthering its goal of recovering the ABT stock to maximum sustainable yield level.

The National Research Council (National Academy of Sciences) recommended to NMFS that migratory patterns of bluefin tuna be further investigated and that ‘‘a tagging program be undertaken, with an appropriate combination of conventional, [passive integrated transponder], acoustic, and archival tags * * *.’’ In response, NMFS has worked with fishermen and researchers in a cooperative effort to implant archival tags in ABT. Archival tags are miniature data loggers that offer a powerful tool for discerning the movements, geoposition and behavior of individual highly migratory species (HMS). The recovery of only a few tags would greatly increase knowledge of migratory patterns and spawning site fidelity and provide data that are vital to the international management of ABT.

Through cooperative research programs, about 170 archival tags were implanted in ABT during 1996 and 1997. Additional tags will be implanted in 1998. ABTs equipped with archival tags can be identified not only by a light sensor extending outside the body cavity (in the area of the stomach) but also by uniquely colored fluorescent green conventional streamer tags placed externally on each side of the shoulder. It is estimated that about 6 to 10 ABT with archival tags will be recovered annually. It is imperative that each tag be returned to NMFS to ensure that the most comprehensive data are collected to establish migratory patterns of HMS. Based on information obtained from conventional tag recoveries, the greatest likelihood for recovery of those archival tags already deployed will occur in the 1998 winter fishery off North Carolina.

Data recovery from archival tags requires that fish be harvested. In the event a fish with an archival tag is captured, current regulations could require its immediate release under certain conditions, such as the closure of the ABT season for a permit category. In order to provide for maximum likelihood of data recovery, NMFS, by this interim final rule, exempts the harvest of fish with archival tags from any applicable release requirement provided NMFS enforcement is notified prior to, or at the time of, landing and, as instructed, the tag is removed and returned to NMFS or the fish is made available so that a NMFS scientist or enforcement agent may inspect the fish and recover the archival tag. Although this provision was not part of any proposed rule, the concept and proposed text were presented at public hearings on consolidation of HMS regulations (61 FR 57361, November 6, 1996) and at other public meetings. All comments received were supportive of archival tag research and commenters recognized the need for recovery. Additionally, this rule would relieve restrictions in the case of archivally tagged fish. For these reasons, NMFS issues this interim final rule with further opportunity for public comment.

Recognizing that archival tag implantation poses a mortality risk to fish, NMFS also requests specific comment on the need for persons conducting archival tag research to register and report on activities. Under such a requirement, any person affixing or implanting an archival tag into a regulated species would provide written notification to the Director of the proposed activity in advance of commencing the activity and, upon completion of the activity, would provide a written report to the Director indicating the type and number of tags, the species and approximate size of fish, and the location and method of capture of the fish. Such a requirement would assist NMFS in evaluating the effectiveness of archival tag research, help researchers coordinate activities, and provide a source for researchers to access release and recovery information.

Classification

This interim final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq*. The AA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

This interim final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This final rule implements a new collection-of-information requirement subject to OMB review under the PRA. Reporting requirements for Archival tag recoveries require that the harvester notify NMFS upon landing the fish, prepare or process the fish as instructed, and provide information about the time and place of capture. Public reporting burden for this collection of information is estimated to average 30 minutes per response. This reporting requirement has been approved by OMB under control number 0648–0338.

NMFS has determined that, under 5 U.S.C. 553(b)(B), there is good cause to waive the requirement for prior notice and an opportunity for public comment as such procedures would be contrary to the public interest. NMFS presented the concept and proposed regulatory text for this exemption while conducting public hearings on a proposed rule on consolidation of highly migratory species regulations. NMFS had intended to incorporate the archival tag exemption into the final consolidation rule. However, while that process remains ongoing, NMFS has received information that the greatest likelihood of recovery will be in the North Carolina winter ABT fishery starting on January 1, 1998. If fish are caught and must be released, live or dead, information will be irretrievably lost. As such, given the need for scientific data from throughout the species' range, and the fact that NMFS has already received public comment on the subject matter of this rule, further delay in the implementation of this action to provide an opportunity for additional comment is contrary to the public interest.

To the extent that a fish that would otherwise have to be released may be retained under this rule, this rule relieves a restriction and under 5 U.S.C. 553(d)(1) is not subject to a delay in effective date. To the extent that this rule imposes certain reporting and other requirements associated with such retention, the AA, under 5 U.S.C. 553(d)(3), has determined that there is good cause, as explained above, to waive the otherwise required 30-day delay in effective date. NMFS will rapidly communicate the new regulations to fishery participants through its FAX network, HMS Information Line, and NOAA weather radio.

List of Subjects in *50 CFR Part 285*

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 31, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter II are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table, is amended by adding, in numerical order, the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB Control number (all numbers begin with 0648)
* * * * *	
50 CFR	
* * * * *	
285.9	–0338
* * * * *	

50 CFR Chapter II

PART 285—ATLANTIC TUNA FISHERIES

3. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

4. In § 285.2, a definition for ''archival tag'' is inserted in alphabetical order to read as follows:

§ 285.2 Definitions.

* * * * *

Archival tag means an electronic recording device that is implanted or affixed to a fish that is released alive back into the ocean to allow collection of scientific information about the migratory behavior of that fish.

* * * * *

5. In § 285.3, paragraph (a) is revised to read as follows:

§ 285.3 Prohibitions.

* * * * *

(a) For any person or for any fishing vessel subject to the jurisdiction of the United States to engage in fishing or to land any Atlantic tuna in violation of these rules, except that fish implanted or affixed with archival tags may be possessed, retained and landed under the provisions of § 285.9.

* * * * *

6. Section 285.9 is added to read as follows:

§ 285.9 Archival tags.

(a) *Reserved*.

(b) *Landing.* Notwithstanding other provisions of this part, any person may catch, possess, retain, and land any regulated species in which an archival tag has been affixed or implanted, provided that person complies with all requirements of paragraph (c) of this section.

(c) *Landing report.* The person possessing, retaining, or landing, under the authority of paragraph (b) of this section, a regulated species in which an archival tag has been affixed or implanted must contact the NMFS, Southeast Science Center (1–800–437–3936) or any NMFS enforcement office (a list of local NMFS enforcement offices can be obtained from the Director) prior to, or at the time of landing, furnish all requested information regarding the location and method of capture, and, as instructed, remove the tag and return it to NMFS or make the fish available so that a NMFS scientist, enforcement agent, or other person designated in writing by the Director may inspect the fish and recover the tag.

(d) *Quota monitoring.* If a regulated species landed under the authority of paragraph (b) of this section is subject to a quota, the fish shall be counted against the applicable quota category consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the scientific reserve quota established for that species.

7. In § 285.31, paragraph (a)(22) is revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(22) Fail to report the catching of any Atlantic bluefin tuna to which a plastic tag has been affixed under a tag and release program conducted by NMFS or any other scientific organization or in which an archival tag has been affixed or implanted;

* * * * *

[FR Doc. 97–34242 Filed 12–31–97; 4:24 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF STATE

22 CFR Parts 40 and 41

[Public Notice 2665]

Bureau of Consular Affairs; Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Place of Application

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule results from a change in the law. A recent amendment stated that, if a nonimmigrant stays in the United States longer than permitted, the visa of that person is no longer valid. Only a new nonimmigrant visa issued in the country of that person's nationality will be valid for further entry into the United States. If the Secretary of State has determined that extraordinary circumstances exist, however, issuance of a new nonimmigrant visa in another country will be acceptable. This rule, therefore, amends the regulation pertaining to place of application to require such a person to apply in the country of his or her nationality, sets forth some exceptions based on extraordinary circumstances and defines the conditions for determining ''extraordinary circumstances.''

DATES: This interim rule is effective January 7, 1998. Written comments are invited and must be received on or before March 9, 1998.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: This rule amends both Part 40 and Part 41 of Title 22 of the Federal Code of Regulations. It implements the provisions of Section 632 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) with respect to the place of application for nonimmigrants who have voided their previous visas by overstaying the authorized period. Section 632 added a new subsection (g) to INA 222 which renders the visas of such nonimmigrants void.

Part 40 of 22 CFR sets forth the various regulations pertaining to ineligibility under the INA. It is amended herein to include section 40.68, previously reserved, under the title ''Aliens Subject to INA 222(g)''. This new section states that any alien subject to INA 222(g) is ineligible for a new nonimmigrant visa unless applying for it in compliance with the place of application requirements of 22 CFR 41.101.

This rule then amends Section 41.101, which currently sets forth the regulations for the normal place of application for a nonimmigrant visa. It first redesignates the current paragraph (b) of 22 CFR 41.101 as paragraph (e). It then inserts a new paragraph (b) to include requirements for most aliens subject to the provisions of INA 222(g) to apply in the country of nationality. It also adds a new paragraph (c) identifying certain extraordinary circumstances that permit some such persons to apply in other specified countries. A new paragraph (d) defines certain relevant terms.

Proposed 22 CFR 41.101(b) requires an alien subject to INA 222(g) to apply in a consular district which is in, or includes, his or her country of nationality unless the applicant is within stated exceptions. This regulation then provides in paragraph (c) (1) through (5) for certain varying extraordinary circumstances.

Paragraph (c)(1) relates to those for whom circumstances not under the control of the alien rendered the prior visa void under INA 222(g)(1). Essentially, this subparagraph exculpates certain aliens whose ''overstay'' was through no fault of their own and for whom there is a clear national interest in not requiring the delay and expense of returning to their place of nationality. Specifically, this regulation excepts those physicians serving in underserved areas of the United States under the provisions of INA 214(k) for whom a waiver of the foreign residence requirement under INA 212(e) or a petition to accord H–1B status was filed prior to the end of their authorized period of stay but that period expired during the adjudication of those applications. It is in the interest of the United States that such medical care-givers be able to enter on (or return to) their duties in the underserved area without unnecessary delays often caused by lengthy travel. Moreover, their sponsors can more fruitfully use the money required for such travel for other health purposes. Subparagraph (c)(2) provides for the possibility of further such determinations.

The title of IIRIRA Section 632 is ''Elimination of Consulate Shopping for Visa Overstays.'' It seems clear from both the title and the text of the provision that the Congress intended that future visa applications of period-of-stay violators should be adjudicated by those best situated to assess the bona fides of the nonimmigrant visa applicant; i.e., Congressional intent lay in requiring special scrutiny of ''overstay'' visa applicants.

Most people live in the country of their nationality, which the statute designates as the proper place of application for aliens subject to INA 222(g). Many other people, however, live elsewhere. The best place to adjudicate bona fides is not, in all probability, in the country of nationality in such cases. If an alien has spent years outside his or her country of nationality, returning there may not provide the special scrutiny desired by the Congress. Applying where one lives probably will. For this reason, Section 41.101(c) (3) and (4) propose other places of application for certain individuals subject to INA 222(g)(1).

Subparagraph (c)(3) requires aliens subject to INA 222(g) who are residents of a third country to apply in the country of residence. Subparagraph (c)(4) directs a national and resident of a country in which there is no United States consular office to apply in the country designated by the Department to accept immigrant visa applications from persons of that nationality. This latter directive is in accordance with INA 222(g)(2)(A) which authorizes the Secretary to specify the place of application for such aliens. Subparagraph 41.101(c)(5) addresses another circumstance not falling within the norm: dual nationals. A dual national must apply in the county of residence.

Paragraph (d) defines ''extraordinary circumstances'' and ''nationality'' with respect to stateless persons. For purposes of visa issuance in the context of INA 222(g), a stateless person shall be considered to be a national of the country which issued his or her travel document.

Section 41.121(a), ''Grounds of refusal'', is also amended to include INA 222(g).

Interim Rule

The provision of law being implemented became effective on enactment of IIRIRA, September 20, 1996, and consular officers have been complying with it based on guidance essentially akin to that in this interim rule but not yet codified in regulations. It is essential that a formal regulatory order undergird their actions at the earliest possible date. Therefore, the implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based upon the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

This rule is favorable to alien physicians in underserved areas and in other respects is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects

22 CFR Part 40

Aliens, Inadmissibility, Nonimmigrants, Passports, Visas.

22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

In view of the foregoing, 22 CFR Part 40 is amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 40 continues to read:

Authority: 8 U.S.C. 1104.

2. Section 40.68 is added to read as follows:

§ 40.68 Aliens subject to INA 222(g).

An alien who, under the provisions of INA 222(g), has voided a nonimmigrant visa by remaining in the United States beyond the period of authorized stay is ineligible for a new nonimmigrant visa unless the alien complies with the requirements in 22 CFR 41.101 (b) or (c) regarding the place of application.

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104.

2. 22 CFR 41.101 is amended by removing the period at the end of paragraph (a)(1)(ii) and adding a semicolon and ''or'', adding paragraph (a)(1)(iii), amending paragraph (a)(2) by removing ''to the Visa Office'' and adding ''for Visa Services'' in its place, and redesignating paragraph (b) as paragraph (e) and adding new paragraphs (b) through (d) to read as follows:

§ 41.101 Place of application.

(a) * * *

(1) * * *

(iii) The alien is subject to INA 222(g) and must apply as set forth in paragraph (b) or (c) of this section.

(b) Place of application for persons subject to INA 222(g). Notwithstanding the requirements of paragraph (a) of this section, an alien whose prior nonimmigrant visa has been voided pursuant to INA 222(g), who is applying for a new nonimmigrant visa, shall make application at a consular office which has jurisdiction in or for the country of the alien's nationality unless extraordinary circumstances have been determined to exist with respect to that alien as set forth in paragraph (c) of this section.

(c) Exceptions based on extraordinary circumstances. (1) An alien physician serving in underserved areas of the United States under the provisions of INA 214(k) for whom an application for a waiver of the 2-year foreign residence requirement and/or a petition to accord H–1B status was filed prior to the end of the alien's authorized period of stay and was subsequently approved, but whose authorized stay expired during the adjudication of such application(s), shall make application in accordance with paragraph (a) of this section.

(2) Any other individual or group whose circumstances are determined to be extraordinary, in accordance with paragraph (d)(1) of this section, by the Deputy Assistant Secretary for Visa Services upon the favorable recommendation of an immigration or consular officer, shall make application in accordance with paragraph (a) of this section.

(3) An alien who has, or immediately prior to the alien's last entry into the United States had, a residence in a country other than the country of the alien's nationality shall apply at a consular office with jurisdiction in or for the country of residence.

(4) An alien who is a national and resident of a country in which there is no United States consular office shall apply at a consular office designated by the Deputy Assistant Secretary for Visa Services to accept immigrant visa applications from persons of that nationality.

(5) An alien who possesses more than one nationality and who has, or immediately prior to the alien's last entry into the United States had, a residence in one of the countries of the alien's nationality shall apply at a consular office in the country of such residence.

(d) Definitions relevant to INA 222(g). (1) Extraordinary circumstances—Extraordinary circumstances may be found where compelling humanitarian or national interests exist or where necessary for the effective administration of the immigration laws. Extraordinary circumstances shall not be found upon the basis of convenience or financial burden to the alien, the alien's relative, or the alien's employer.

(2) Nationality—For purposes of paragraph (b) of this section, a stateless person shall be considered to be a national of the country which issued the alien's travel document.

* * * * *

§ 41.121 [Amended]

3. 22 CFR 41.121(a) is amended by removing ''or'' before ''INA 22(g)'' at the end of the first sentence, and adding a comma and ''or INA 222(g)'' after ''INA 221(g)''.

Dated: December 5, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–87 Filed 1–6–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8755]

RIN 1545–AV74

Qualified Zone Academy Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the federal income tax treatment of qualified zone academy bonds. The regulations in this document provide needed guidance to holders and issuers of qualified zone academy bonds. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 226(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, 111 Stat. 788 (1997), amended the Internal Revenue Code (Code) by redesignating section 1397E as section 1397F and adding a new section 1397E. Section 1397E authorizes a new type of debt instrument known as a qualified zone academy bond.

Explanation of Provisions

In General

A qualified zone academy bond is a taxable bond issued by a state or local government the proceeds of which are used to improve certain eligible public schools. In lieu of receiving periodic interest payments from the issuer, an eligible holder of a qualified zone academy bond is generally allowed annual federal income tax credits while the bond is outstanding. These credits compensate the holder for lending money to the issuer and function as payments of interest on the bond.

These temporary regulations provide rules for the federal income tax treatment of qualified zone academy bonds. These regulations generally treat the allowance of the credit as if it were a payment of interest on the bond. These regulations also provide rules to determine (1) the credit rate, (2) the discount rate used to present value private business contributions, and (3) the discount rate used to determine the maximum term of a qualified zone academy bond.

These regulations generally do not provide guidance on the statutory requirements that must be met for a bond to qualify as a qualified zone academy bond. Section 1397E(d) sets forth a number of detailed requirements that must be met for a bond to qualify as a qualified zone academy bond. In particular, section 1397E(d)(1)(C) requires the issuer to certify (1) that it has written assurances that private entities have agreed to contribute a certain level of goods or services to the qualified zone academy, and (2) that it has the written approval of the eligible local education agency for the bond issuance. The Treasury and the IRS intend that these certifications will be respected and may be relied on by taxpayers if the certifications are reasonably made.

In addition, section 1397E(d)(1)(A) requires that 95 percent or more of the proceeds of an issue of qualified zone academy bonds are to be used for a qualified purpose described in section 1397E(d)(5) with respect to a qualified zone academy as defined in section 1397E(d)(4). The Treasury and the IRS intend that the qualified purposes set forth in section 1397E(d)(5) are to be broadly interpreted. The Treasury and the IRS also intend that, if an issuer is unable to actually spend 95 percent or more of the proceeds of a qualified zone academy bond for a qualified purpose, the issuer may apply remedial actions similar to the remedial actions set forth in § 1.142–2 to preserve the qualification of a bond. Further, the Treasury and the IRS intend that taxpayers may rely on an issuer's determination that a public school (or academic program within a public school) is a qualified zone academy for purposes of section 1397E(d)(4) if the determination has a reasonable basis. The Treasury and IRS request comments on whether additional guidance is needed with respect to the section 1397E(d) requirements.

Section 1397E(e) imposes a national limitation on the amount of qualified zone academy bonds that can be issued. For 1998 and 1999, the IRS will publish a revenue procedure allocating the national limitation among the States and the possessions.

The Credit Allowance

A qualified zone academy bond provides an annual federal income tax credit to certain holders. Under the regulations, the credit is deemed paid on the *credit allowance date*—the last day of each one-year accrual period on the bond. A taxpayer that receives a credit on a credit allowance date may use the credit to offset its income tax liability for the taxable year that includes the credit allowance date.

There are two limitations on the use of the credit. First, only eligible taxpayers holding the bond on the credit allowance date may claim the credit. Section 1397E(d)(6) defines an *eligible taxpayer* as a bank, an insurance company, or a corporation actively engaged in the business of lending money. Second, an eligible taxpayer may claim the credit only to the extent the taxpayer has a tax liability for the taxable year that includes the credit allowance date. See section 1397E(c). The credit is nonrefundable.

Treatment of the Credit as Interest

The regulations treat the credit on a qualified academy zone bond as if it were a payment of qualified stated interest. This treatment effectively conforms the treatment of the credit with the treatment of interest income on debt instruments. Thus, for example, a holder that uses an accrual method of accounting accrues the credit amount over the one-year accrual period that ends on the credit allowance date.

Adjustment When Credit is Limited or Disallowed

In two situations the holder of a qualified zone academy bond on a credit allowance date will not be able to use some or all of the credit to offset its tax liability. First, if the holder on a credit allowance date is not an eligible taxpayer (a bank, insurance company, or corporation actively engaged in the business of lending money), no credit is allowed. Second, the amount of the credit may exceed the income tax liability of a holder that is an eligible taxpayer. In this second case, because the credit is nonrefundable, some or all of the credit will not be used.

In these situations, the regulations allow the holder to adjust its income by deducting the amount of the unused credit. This deduction is allowed for the taxable year that includes the credit allowance date. The Treasury and the IRS request comments on whether this adjustment works appropriately when an eligible taxpayer holds a qualified zone academy bond on the credit allowance date but has an income tax liability (determined without regard to the credit) that is less than the amount of the credit.

Credit Rate

Section 1397E(b)(2) authorizes the Treasury to establish a single, uniform credit rate that will permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuer. This section also requires the Treasury to adjust the credit allowance rate on a monthly basis to reflect changes in market interest rates.

It is not possible to determine a uniform credit rate that would permit all qualified zone academy bonds to be issued at par. Some borrowers are less creditworthy than others and, therefore, borrow at less favorable rates. In addition, because section 1397E(b)(2) requires the Secretary to set the credit rate in the month before the bond is issued, changes in market interest rates between the time the rate is set and the time a qualified zone academy bond is issued can result in a bond being issued at a price that is different than par.

The regulations provide a single monthly rate that will minimize the discount or premium on qualified zone academy bonds. Specifically, the regulations provide that the credit rate is 110 percent of the long-term applicable Federal rate (AFR), compounded annually, for the month of issuance. Tying the credit rate to the AFR ensures that the rate will be adjusted on a monthly basis to reflect changes in market interest rates. In addition, the Treasury and the IRS believe the 10 percent spread over the long-term AFR is appropriate, in part, because qualified zone academy bonds bear more credit and liquidity risk than long-term Treasury bonds.

Maximum Term

Section 1397E(d)(3) sets out a formula for determining the maximum term of a qualified zone academy bond. The formula requires the use of a discount rate equal to the average annual interest rate of tax-exempt obligations having a term of ten years or more. Because there is no readily available source for this discount rate, the regulations provide that the discount rate is 110 percent of the long-term adjusted AFR, compounded semi-annually. The long-term adjusted AFR is published on a monthly basis and is designed to reflect the current yield of a risk-free tax-exempt obligation having a term of 9 years or more.

Taxable Obligation

It is possible that some qualified zone academy bonds may either (1) provide for payments of stated interest, or (2) be issued at a discount. The Treasury and the IRS have determined that qualified zone academy bonds are not obligations the interest on which is excluded from gross income under section 103(a). There are a number of reasons for treating a qualified zone academy bond as a taxable obligation. For example, the requirement in section 1397E(g) that a holder include the allowed amount of the credit in gross income evidences an intention to treat qualified zone academy bonds as taxable, not tax-exempt, obligations.

Coordination With Estimated Tax Rules

The regulations do not address the estimated tax consequences of holding a qualified zone academy bond. The Treasury and the IRS request comments on whether there is a need to coordinate the regulations with the estimated tax rules and, if so, how they might be coordinated.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

Several persons from the Office of Chief Counsel and the Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1397E–1T also issued under 26 U.S.C. 1397E(b) and 1397E(d). * * *

Par. 2. Section 1.1397E–1T is added to read as follows:

§ 1.1397E–1T Qualified zone academy bonds (temporary).

(a) *Overview.* In general, a qualified zone academy bond is a taxable bond issued by a state or local government the proceeds of which are used to improve certain eligible public schools. An eligible taxpayer that holds a qualified zone academy bond generally is allowed annual federal income tax credits in lieu of periodic interest payments. These credits compensate the eligible taxpayer for lending money to the issuer and function as payments of interest on the bond. Accordingly, this section generally treats the allowance of a credit as if it were a payment of interest on the bond. In addition, this section provides rules to determine the credit rate, the present value of qualified contributions from private entities, and the maximum term of a qualified zone academy bond.

(b) *Credit rate.* The credit rate for a qualified zone academy bond is equal to 110 percent of the long-term applicable Federal rate (AFR), compounded annually, for the month in which the bond is issued. The Internal Revenue Service publishes this figure each month in a revenue ruling that is published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this Chapter.

(c) *Private business contribution requirement.* To determine the present value (as of the issue date) of qualified contributions from private entities under section 1397E(d)(2), the issuer must use a reasonable discount rate. The credit rate determined under paragraph (b) of this section is a reasonable discount rate.

(d) *Maximum term.* The maximum term for a qualified zone academy bond is determined under section 1397E(d)(3) by using a discount rate equal to 110 percent of the long-term adjusted AFR, compounded semi-annually, for the month in which the bond is issued. The Internal Revenue Service publishes this figure each month in a revenue ruling that is published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this Chapter.

(e) *Tax credit*—(1) *Eligible taxpayer.* An eligible taxpayer (within the meaning of section 1397E(d)(6)) that holds a qualified zone academy bond on a credit allowance date is allowed a tax credit against the federal income tax imposed on the taxpayer for the taxable year that includes the credit allowance date. The amount of the credit is equal to the product of the credit rate and the outstanding principal amount of the bond on the credit allowance date. The credit is subject to a limitation based on the eligible taxpayer s income tax liability. See section 1397E(c).

(2) *Ineligible taxpayer.* A taxpayer that is not an eligible taxpayer is not allowed a credit.

(f) *Treatment of the allowance of the credit as a payment of interest*—(1) *General rule.* The holder of a qualified zone academy bond must treat the bond as if it pays qualified stated interest (within the meaning of § 1.1273–1(c)) on each credit allowance date. The amount of the deemed payment of interest on each credit allowance date is equal to the product of the credit rate and the outstanding principal amount of the bond on that date. Thus, for example, if the holder uses an accrual method of accounting, the holder must accrue as interest income the amount of the credit over the one-year accrual period that ends on the credit allowance date.

(2) *Adjustment if the holder cannot use the credit to offset a tax liability.* If a holder holds a qualified zone academy bond on the credit allowance date but cannot use all or a portion of the credit to reduce its income tax liability (for example, because the holder is not an eligible taxpayer or because the limitation in section 1397E(c) applies), the holder is allowed a deduction for the taxable year that includes the credit allowance date. The amount of the deduction is equal to the amount of the unused credit deemed paid on the credit allowance date.

(g) *Not a tax-exempt obligation.* A qualified zone academy bond is not an obligation the interest on which is excluded from gross income under section 103(a).

(h) *Cross-references.* See section 171 and the regulations thereunder for rules relating to amortizable bond premium. See § 1.61–7(c) for the seller s treatment of a bond sold between interest payment dates (credit allowance dates) and § 1.61–7(d) for the buyer s treatment of a bond purchased between interest payment dates (credit allowance dates).

(i) [Reserved]

(j) *Effective date.* This section applies to a qualified zone academy bond issued on or after January 1, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 19, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–21 Filed 1–6–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[FRL–5943–6]

Technical Amendments to Benzidine-Based Chemical Substances; Significant New Uses of Certain Chemical Substances: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On October 7, 1996 (61 FR 52287), the Environmental Protection Agency published in the **Federal Register** a final significant new use rule under the Toxic Substances Control Act (TSCA) for benzidine-based substances. The rule established an effective date of November 20, 1996. This document corrects the effective date of the rule to December 30,1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997. Persons who begin commercial manufacture, importation, or processing of listed benzidine-based chemical substances for any significant new use listed in this between August 30, 1995, and December 30, 1997 must comply with the requirements of the final rule.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, Director, Regulatory Coordination Staff, Office of Prevention, Pesticides and Toxics, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Telephone: (202) 260–2922.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the October 7, 1996 **Federal Register** document, by operation of law, the rule did not take effect on November 20, 1996 as stated therein. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since October 7, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 7, 1996 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 19 of TSCA, challenges to this amendment must be brought within 60 days of today's publication of this rule.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–262 Filed 1–5–98; 10:55 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–045–1–9804a; FRL–5946–5]

Approval and Promulgation of Implementation Plans: Revisions to Several Chapters of the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 28, 1997, the State of Alabama through ADEM submitted a State implementation plan (SIP) revision of the ADEM Administrative Code for the Air Pollution Control Program. Revisions were made to Chapters 335–3–1—General Provisions, 335–3–3—Control of Open Burning and Incineration and 335–3–6—Control of Organic Emissions. The Environmental Protection Agency (EPA) is approving these revisions but is not taking action in this document on the revisions made to chapters 335–3–10—Standards of Performance for New Stationary Sources and 335–3–11—National Emissions Standards of Hazardous Air Pollutants because they are not a part of the federally approved SIP for Alabama.

DATES: This action will be effective March 9, 1998 unless adverse or critical comments are received by February 6, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by ADEM may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104

Alabama Department of Environmental Management, 1751 Congressman W.

L. Dickinson Drive, Montgomery, Alabama 36109

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404)562–9038.

SUPPLEMENTARY INFORMATION: On August 28, 1997, the State of Alabama through ADEM submitted numerous changes to their Air Division Administrative Code to be incorporated into their SIP. The changes include revisions to the definition of volatile organic compounds (VOC) in chapter 335–3–1, changes to the open burning rules in Chapter 335–3–3 and a technical amendment to Chapter 335–3–6. The following is a brief summary of the revisions made to the aforementioned Chapters.

Summary of Revisions

Chapter 335–3–1—General Provisions

ADEM is revising 335–3–1–.02(gggg) to add HFC 43–10mee and HCFC 225ca and cb to the list of compounds excluded from the definition of volatile organic compounds (VOC) on the basis that these compounds have been determined to have negligible photochemical reactivity. These compounds are solvents which could be used in electronics and precision cleaning. For a more detailed rationale on why these chemicals were found to have negligible photochemical reactivity see the document published in the **Federal Register** on October 8, 1996, (61 FR 52848), which explains the EPA's decision to add HFC 43–10mee and HCFC 225ca and cb to this list of excluded compounds.

Chapter 335–3–3—Control of Open Burning and Incineration

Rule 335–3–.01(9) was revised to incorporate regulations adopted by the local air program of Jefferson County, Alabama. This revision will prohibit open burning in Jefferson County, Alabama during the ozone season months of June, July and August.

Chapter 335–3–6—Control of Organic Emissions

Rule 335–3–6(5) was deleted because it addresses testing and monitoring procedures for perchloroethylene dry cleaning systems which are no longer needed because perchloroethylene was exempted from the list of VOCs by EPA on the basis that this compound has been determined to have negligible photochemical reactivity (See 61 FR 4590, February 7, 1996).

Final Action

The EPA is approving the aforementioned revisions because they meet the Agency requirements. This action is being published without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 9, 1998 unless, adverse or critical comments are received by February 6, 1998.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule published with this action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 9, 1998.

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.,* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: December 5, 1997.

A. Stan Meiburg,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(71) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c)* * *

(71) The State of Alabama submitted revisions to the ADEM Administrative Code for the Air Pollution Control Program on October 30, 1996. These revisions involve changes to Chapters 335–3–1, 335–3–3 and 335–3–6.

(i) Incorporation by reference. Chapters 335–3–1–.02(gggg)(24–27), 335–3–3–.01(9) and 335–3–6–.16 except for (5) were adopted on August 19, 1997.

(ii) Other material. None.

[FR Doc. 98–357 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300599; FRL–5764–5]

RIN 2070–AB78

Gamma Aminobutyric Acid; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biochemical gamma aminobutyric acid (GABA) in or on all food commodities, when applied as a plant growth and crop yield enhancer in accordance with good agricultural practices. This exemption was requested by Auxein Corporation.

DATES: This regulation becomes effective February 6, 1998. Objections and requests for hearings must be received by EPA on or before March 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300599], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300599], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300599]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Edward Allen, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location, telephone number, and e-mail: 5th Floor CS #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone No. (703) 308-8699), e-mail: allen.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Auxein Corporation, P.O. Box 27519, 3125 Sovereign Drive, Suite B, Lansing, MI 48911 had requested in pesticide petition 7F4843, the establishment of an exemption from the requirement of a tolerance for residues of the biochemical gamma aminobutyric acid (GABA). A notice of filing (PF–772) was published in the **Federal Register** of October 29, 1997 (62 FR 57170; FRL–5751–3), and the notice announced that the comment period would end on November 28, 1997; no comments were received. The data submitted in the petition and all other relevant material have been evaluated. Following is a summary of EPA's findings regarding this petition.

I. Summary

A. Proposed Use Practices

Gamma aminobutyric acid (GABA) will be incorporated into the end-use product, AuxiGro™ WP Plant Growth Enhancer as an active ingredient. AuxiGro WP is proposed for use in a variety of agricultural, horticultural, and floricultural applications to enhance plant growth and crop productivity.

Depending on the crop, the first application of AuxiGro is made at first bloom, first bud, at the 4-6 leaf stage, or at a prescribed growth stage. A subsequent application, for a maximum of two (2) applications, may be made 1-3 weeks later. The rate range is 0.10 - 0.75 pounds of formulated product/acre per treatment, not to exceed a maximum of 1.5 lb/acre per growing season. This equates to 0.4 lb/acre (0.2 kg) of GABA applied at the maximum use rate.

B. Product Identity/Chemistry

GABA is a non-protein amino acid that is ubiquitous in nature. It has been found in microorganisms, lower and higher plants, fish, birds, insects, and mammals. GABA is a white, crystalline powder with a pH of 6.5 to 7.5. It is freely soluble in water, but insoluble or poorly soluble in other solvents. The melting point for GABA is 202 degrees C on rapid heating.

II. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the scientific data and other relevant information in support of this action and considered its validity, completeness, reliability, and relationship to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The open literature reports studies involving prolonged chronic administration of large doses (up to 1 g/kg/day) of GABA to rats and dogs. No signs of toxicity or untoward effects were observed in these studies. According to the literature, similar doses have been administered repeatedly to unanesthetized dogs without untoward effects. In clinical studies, daily oral doses of 8 mM/kg (0.8 g/kg) have been administered to humans for a year or more with no indication of chronic or cumulative toxicity.

AuxiGro WP, the end-use formula containing 29.2% GABA, has been studied for acute toxicity. Acute oral toxicity of AuxiGro in rats is greater than 5,050 mg/kg (Toxicity Category IV). Acute dermal toxicity in rabbits is greater than 5,050 mg/kg (Toxicity Category IV). In an eye irritation study, all signs of irritation cleared within 48 hours following administration of AuxiGro (Toxicity Category III). A rabbit dermal irritation study with AuxiGro resulted in limited signs of irritation that cleared within 24 hours (Toxicity Category IV). There was no indication of dermal sensitization in a guinea pig dermal sensitization study.

Waivers have been requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity, chronic toxicity, and acute toxicity to nontarget species. Waivers were accepted based on GABA's natural occurrence, use as a pharmaceutical agent, favorable toxicological profile in chronic toxicology studies, and inconsequential exposure resulting from label-directed uses.

They were accepted based on the following rationale: (a) low acute toxicity in mammalian species, (b) natural occurrence and lack of persistence in the environment, and (c) natural occurrence in plants and ability to promote growth of numerous plant species.

IV. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure.* GABA is ubiquitous innature. Therefore, applications of AuxiGro WP would only incrementally add to levels occurring naturally in the environment. GABA concentrations in plants have been reported to range from 0.03 to 32.5 uM/g (0.000005 g to 0.0000325 g), fresh weight. It is presumed that the higher levels are probably due to stress and/or localized high levels within certain plant tissues. Based on these figures, the naturally-occurring level of GABA is calculated to be 0.1 kg/acre - 7.15 kg/acre. The high-end (maximum application rate) estimate of incremental loading of GABA resulting from application of AuxiGro is 0.2 kg/acre. Thus, applied GABA is well within the range of that found in nature.

2. *Non-dietary, non-occupational exposure.* AuxiGro WP is proposed for use on turf and ornamentals. Exposure from turfgrass applications are expected to be minimal to non-existent because of the low application rates. Exposures resulting from application to ornamentals is also anticipated to be negligible because consumers will not be in contact with treated plants until after the foliage is dry.

V. Cumulative Effects

GABA has a very low toxicity to humans. Because of its low toxicity, low rate of application, and use patterns, the Agency believes that there is no reason to expect any cumulative effects from GABA and other substances.

VI. Endocrine Disruptors

The Agency has no information to suggest that GABA will adversely affect the immune or endocrine systems. The Agency is not requiring information on the endocrine effects of this biochemical pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

VII. Safety Determination for U.S. Population, Infants and Children

Based on the information discussed above, EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of GABA. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, the toxicity of GABA to mammals is very low and under reasonably foreseeable circumstances it does not pose a risk.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, the Agency believes there is reliable data to support the conclusion that GABA is practically non-toxic to mammals, including infants and children, and, thus, a margin of exposure (safety) approach is not needed to protect adults or infants and children.

VIII. Analytical Method

The Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for GABA.

IX. Codex Maximum Residue Level

There are no CODEX tolerances or international tolerance exemptions for GABA at this time.

X. Conclusion

Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of GABA. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, exposure to GABA resulting from label-directed use is inconsequential, does not cross the blood-brain barrier, and is consumed daily by the human population from naturally-occurring sources. As a result, EPA establishes an exemption from the requirement of a tolerance pursuant to FFDCA section 408(c) for GABA, on the condition that it be used in accordance with use directions provided on the product label.

XI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance exemption regulation issued by EPA under new section 408(e) as was provided in the old section 408. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may within 60 days after publication of this document in the **Federal Register** file written objections to the regulation and may also request a hearing on those objecitons. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under ADDRESSES at the beginning of this rule (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP Docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

XII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket number [OPP–300599] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

XIII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XIV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 30, 1997.

Janet L. Andersen,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1188 is revised to read as follows:

§ 180.1188 Gamma aminobutyric acid; exempt from the requirement of a tolerance.

Gamma aminobutyric acid is exempt from the requirement of a tolerance on all food commodities when used as a plant growth enhancer in accordance with good agricultural practices.

[FR Doc. 98–360 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300598; FRL–5764–4]

RIN 2070–AB78

Glutamic Acid; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biochemical glutamic acid in or on all food commodities, when applied as a plant growth and crop yield enhancer in accordance with good agricultural practices. This exemption was requested by Auxein Corporation.

DATES: This regulation becomes effective February 6, 1998. Objections and requests for hearings must be received by EPA on or before March 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300598], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ‘‘Tolerance Petition Fees’’ and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Information and Records Integrity Branch, Information Resources and Services (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300598]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Edward Allen, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location, telephone number, and e-mail: 5th Floor CS #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone No. (703) 308–8699, e-mail: allen.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Auxein Corporation, P.O. Box 27519, 3125 Sovereign Drive, Suite B, Lansing, MI 48911 had requested in pesticide petition 7F4842, the establishment of an exemption from the requirement of a tolerance for residues of the biochemical glutamic acid. A notice of filing (PF–772) was published in the **Federal Register** of October 29, 1997 (62 FR 56268, FRL–5751–3), and the notice announced that the comment period would end on November 28, 1997; no comments were received. The data submitted in the petition and all other relevant material have been evaluated. Following is a summary of EPA’s findings regarding this petition.

I. Summary

A. Proposed Use Practices

Glutamic acid will be incorporated into the end-use product, AuxiGro WP Plant Growth Enhancer as an active ingredient. AuxiGro is proposed for use in a variety of agricultural, horticultural, and floricultural applications to enhance plant growth and crop productivity.

Depending on the crop, the first application of AuxiGro is made at first bloom, first bud, at the 4–6 leaf stage, or at a prescribed growth stage. A subsequent application, for a maximum of two (2) applications, may be made 1–3 weeks later. The rate range is 0.10 – 0.75 pounds of formulated product/acre per treatment, not to exceed a maximum of 1.5 lb/acre per growing season. This equates to 0.4 lb/acre (0.2 kg) of glutamic acid applied at the maximum use rate.

B. Product Identity/Chemistry

Glutamic acid is an amino acid found in microorganisms, tissues of animal, all food, and higher plants as free amino acid or bound in protein. Glutamic acid is a white, practically odorless, free flowing crystalline powder. It is slightly soluble in water, forming acidic solutions. The pH of a saturated solution is about 3.22. The specific gravity for glutamic acid is 1.538 @ 20/4 C and the decomposition point is 175 degrees C @ 10 millimeters (mm) mercury (Hg).

II. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ‘‘safe.’’ Section 408(c)(2)(ii) defines ‘‘safe’’ to mean that ‘‘there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.’’ This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ‘‘ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...’’ EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the scientific data and other relevant information in support of this action and considered its validity, completeness, reliability, and relationship to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Glutamate has been administered to numerous species in long term dietary studies without adverse effects. The end-use product containing glutamic acid, AuxiGro WP, has been evaluated for acute toxicity. Acute oral toxicity in rats is greater than 5,050 milligrams per kilogram (mg/kg) (Toxicity Category IV). Acute dermal toxicity in rabbits is greater than 5,050 mg/kg (Toxicity Category IV). In an eye irritation study, all signs of irritation cleared within 48 hours following administration of AuxiGro (Toxicity Category III). Irritation cleared within 48 hours in the remaining rabbit. A rabbit dermal irritation study with AuxiGro resulted in limited signs of irritation that cleared within 24 hours (Toxicity Category IV). There was no indication of dermal sensitization in a guinea pig dermal sensitization study.

Humans have the capacity to rapidly metabolize ingested glutamate (the expected exposure route) to keep plasma glutamate levels constant: no adverse effects on neurological or hepatic function were observed in humans administered levels up to 137 g daily for 14–41 days, which is much higher than the rate applied to plants. The blood brain barrier further protects the brain from large infusions of glutamate. Likewise, the placental barrier protects the developing fetus against up to twentyfold increases in maternal glutamate levels.

Waivers have been requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity, chronic toxicity, and acute toxicity to nontarget species based on glutamic acid's ubiquity in nature, long history of food uses, favorable toxicological profile in chronic toxicology studies, and inconsequential exposure resulting from label-directed use rates.

Waivers were also requested for acute avian oral toxicity, nontarget plants, avian dietary, and nontarget insects. They were accepted based on the following rationale: (a) low acute toxicity in mammalian species, (b) natural occurrence and lack of persistence in the environment, and (c) natural occurrence in plants and ability to promote growth of numerous plant species.

IV. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure.* Glutamic acid is ubiquitous in nature and is found in microorganisms, lower and higher plant species, fish, birds, insects, mammals, and natural and processed foods. It is the most prevalent amino acid in plant and animal proteins. Worldwide production of glutamic acid is over 340,000 tons/yr. Many items in the human daily diet contain appreciable quantities of free glutamic acid. For example, ripe tomatoes, mushrooms, peas, corn, potatoes, squash, cheese, eggs, poultry and meat provide from 20 to 150 mg of glutamic acid per 100 gram serving. Daily consumption for a 70–kg individual of glutamate has been previously reported to be 10.4 g per day, based on an intake of 100 grams of protein/day. Regarding the sodium salt of glutamic acid, monosodium glutamate (MSG), The Joint Expert Committee on Food Additives of the United Nations (JEFCA) has assigned an Acceptable Daily Intake of ''not specified'' (no numerical limitation), meaning that MSG can be used safely according to food manufacturing practices in food by people of all ages.

Dietary exposure due to topical applications of glutamic acid is difficult to estimate because of the amino acid's prevalence in nature. However, a comparison of naturally-occurring levels of glutamic acid to topically applied levels shows that the applied level is a small fraction of that found naturally. Naturally-occurring levels of glutamic acid in corn and tomatoes are estimated to be 143 lb/acre and 195 lb/acre, respectively. Applied levels of glutamic acid resulting from the application of AuxiGro at maximum use levels (1.5 lb/acre) is 0.4 lb/acre, several orders of magnitude lower than naturally-occurring levels.

Considering the low dose of AuxiGro required to achieve the desired effect, the levels of glutamic acid found naturally in the diet from animal and vegetable proteins and the quantity consumed from processed foods, it can be concluded that incremental dietary exposure to glutamic acid resulting from AuxiGro applications is negligible.

2. *Non-dietary, non-occupational exposure.* AuxiGro is proposed for professional use on turf and ornamentals. Exposure from turfgrass applications is expected to be minimal because golfers will be protected by shoes and socks. Further, based on the limited frequency of use on turfgrass, this non-food use is not likely to result in potential chronic exposure and thus should not be factored into a chronic exposure assessment. Exposures resulting from application to ornamentals is also anticipated to be negligible because consumers will not be in contact with treated plants until after the foliage is dry.

V. Cumulative Effects

Glutamic acid has a very low toxicity to humans. Because of its low toxicity, low rate of application, and use patterns, the Agency believes that there is no reason to expect any cumulative effects from glutamic acid and other substances.

VI. Endocrine Disruptors

The Agency has no information to suggest that glutamic acid will adversely affect the immune or endocrine systems. The Agency is not requiring information on the endocrine effects of this biochemical pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

VII. Safety Determination for U.S. Population, Infants and Children

Based on the information discussed above, EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of glutamic acid. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, the toxicity of glutamic acid to mammals is very low and under reasonably foreseeable circumstances it does not pose a risk.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, the Agency believes there is reliable data to support the conclusion that glutamic acid is practically non-toxic to mammals, including infants and children, and, thus, a margin of exposure (safety) approach is not needed to protect adults or infants and children.

Glutamic acid is classified as Generally Recognized as Safe (GRAS) for use as a direct food additive by the Food and Drug Administration (FDA) and is cleared by the EPA for use as an inert ingredient in certain pesticide products. Condensed, extracted fermentation glutamic acid is approved by the FDA for use in animal feed.

VIII. Analytical Method

The Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for glutamic acid.

IX. Codex Maximum Residue Level

There are no CODEX tolerances or international tolerance exemptions for glutamic acid at this time.

X. Conclusion

Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of glutamic acid. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because of the preponderance of data from the open literature supporting the safe use of glutamate in foods, the supporting acute toxicity data on AuxiGro, and inconsequential resulting from its application to crops. As a result, EPA establishes an exemption from the requirement of a tolerance pursuant to FFDCA section 408(c) for glutamic acid.

XI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance exemption regulation issued by EPA under new section 408(e) as was provided in the old section 408. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may within 60 days after publication of this document in the **Federal Register** file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under ADDRESSES at the beginning of this rule (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP Docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

XII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300598] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

XIII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XIV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(a).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 30, 1997.

Janet L. Andersen,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1187 is revised to read as follows:

§ 180.1187 Glutamic acid; exemption from the requirement of a tolerance.

Glutamic acid is exempt from the requirement of a tolerance on all raw agricultural commodities when used as a plant growth enhancer in accordance with good agricultural practices.

[FR Doc. 98–359 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–5944–9]

Technical Amendments to Ocean Dumping; Amendment of Site Designation; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On December 30, 1996 (61 FR 68963), the Environmental Protection Agency published in the **Federal Register** a final rule concerning an amendment to the ocean dumping site designation for the San Francisco Deep Ocean Site, which established an effective date of December 30, 1996. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Puskar at (202) 260–8532.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated December 30, 1996, by operation of law, the rule did not take effect on December 30, 1996 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since December 30, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying on the effective date stated in the December 30, 1996 **Federal Register** should be penalized if they were complying with the rule as promulgated.

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the December 30, 1996 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–251 Filed 1–2–98; 1:21 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 244 and 245

[FRL–5944–7]

Technical Amendments to Solid Waste Programs; Management Guidelines for Beverage Containers and Resource Recovery Facilities Guidelines; Removal of Obsolete Guidelines: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On December 31, 1996 (61 FR 69032), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the removal of obsolete solid waste management guidelines, which established an effective date of March 3, 1997. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Hostage at (202) 260–8929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated December 31, 1996, by operation of law, the rule did not take effect on March 3, 1997 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since December 31, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying on the effective date stated in the December 31, 1996 **Federal Register** should be penalized if they were complying with the rule as promulgated.

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the December 31, 1996 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 7006 of the Resource Conservation and Recovery Act, challenges to the amendment must be brought by April 7, 1998.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–253 Filed 1–2–98; 1:21 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5944–8]

Technical Amendments to Final Authorization of State Hazardous Waste Management Program; Missouri: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On May 30, 1997 (62 FR 29301), the Environmental Protection Agency published in the **Federal Register** a final rule approving Missouri's hazardous waste program revisions, which established an effective date of July 29, 1997. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Hostage at (202) 260–8929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated May 30, 1997, by operation of law, the rule did not take effect on July 29, 1997 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since May 30, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying on the effective date stated in the May 30, 1997 **Federal Register** should be penalized if they were complying with the rule as promulgated.

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 30, 1997 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 7006 of the Resource Conservation and Recovery Act, challenges to the amendment must be brought by April 7, 1998.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–254 Filed 1–2–98; 1:21 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[FRL–5944–5]

Technical Amendments to Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Stay of Final Rule: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On October 29, 1996 (61 FR 55871), the Environmental Protection Agency published in the **Federal Register** a final rule in which EPA added certain chemical substances to two model information-gathering rules under the Toxic Substances Control Act (TSCA): the TSCA Section 8(a) Preliminary Assessment Information Rule, and the TSCA Section 8(d) Health and Safety Data Reporting Rule. That rule established an effective date of November 29, 1996. On December 11, 1996 (62 FR 65186), EPA published a final rule in the **Federal Register** staying certain portions of the October 29, 1996 final rule. The stay rule established an effective date of December 11, 1996. This document corrects the effective dates of both rules to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

DATES: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, Director, Regulatory Coordination Staff, Office of Prevention, Pesticides, and Toxics, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Telephone: (202) 260–2922.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit both the above rules as required; thus, although the first rule was promulgated on October 29, 1996, by operation of law, the rule did not take effect on November 29, 1996 as stated. Further, although the second rule, staying certain portions of the first rule, was promulgated on December 11, 1996, by operation of law, the rule did not take effect on December 11, 1996 as stated. After EPA discovered its error, both rules were submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective dates of both rules consistent with the provisions of the CRA. Since neither rule became effective as originally intended, the effect of today's rule is to stay the reporting of the category ''nonylphenol ethoxylates'' under 40 CFR 712.30 and 716.120 as intended by the December 11, 1996 rule. However, since the October 29, 1996 rule also made technical amendments to 40 CFR 712.30(e) to revise the CAS number entry for ''alkylphenols and alkylphenol ethoxylates'' and those provisions were not stayed by the December 11, 1996 rule, those technical amendments are effective December 30, 1997.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective dates of the promulgated rules to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rules since October 29, 1996, and December 11, 1996, respectively, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the October 29, 1996 rule is discussed in the October 29, 1996 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective dates of the underlying rules; it does not amend any substantive requirements contained in those rules. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to Section 19 of TSCA, challenges to this amendment must be brought within 60 days of today's publication of this rule.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–256 Filed 1–2–98; 1:29 pm]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[FRL–5943–7]

Technical Amendments to Revocation of Significant New Use Rules for Certain Chemical Substances: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 2, 1997 (62 FR 35690), the Environmental Protection Agency published in the **Federal Register** a final rule that revoked two significant new use rules under the Toxic Substances Control Act (TSCA), and established an effective date of August 1, 1997. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, Chief, Regulatory Coordination Staff, Office of Prevention, Pesticides, and Toxics, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Telephone: (202) 260–2922.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on July 2, 1997, by operation of law, the rule did not take effect on August 1, 1997 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 2, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 2, 1997 **Federal Register** should be penalized if they were complying with the rule as promulgated.

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 2, 1997 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 19 of TSCA, challenges to this amendment must be brought within 60 days of today's publication of this rule.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–264 Filed 1–2–98; 1:34 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[FRL–5943–9]

Technical Amendments to Aliphatic Ester; Revocation of Significant New Use Rule: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 2, 1997 (62 FR 35691), the Environmental Protection Agency published in the **Federal Register** a final rule that revoked a significant new use rule under the Toxic Substances Control Act (TSCA) for aliphatic ester based on a new evaluation of toxicity data. The rule established an effective date of August 1, 1997. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, Director, Regulatory Coordination Staff, Office of Prevention, Pesticides, and Toxics, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Telephone: (202) 260–2922.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated July 2, 1997, by operation of law, the rule did not take effect on August 1, 1997 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 2, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 2, 1997 **Federal Register** should be penalized if they were complying with the rule as promulgated.

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 2, 1997 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller

General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 19 of TSCA, challenges to this amendment must be brought within 60 days of today's publication of this rule.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–263 Filed 1–2–98; 1:29 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1908–IFC]

RIN 0938–AI37

Medicare Program; Application of Inherent Reasonableness to All Medicare Part B Services (Other than Physician Services)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule implements section 4316 of the Balanced Budget Act of 1997. It revises the process for establishing a realistic and equitable payment amount for all Medicare Part B services (other than physician services) when the existing payment amounts are inherently unreasonable because they are either grossly excessive or deficient. This rule describes the factors HCFA (or its carrier) will consider and the procedures it will follow in establishing realistic and equitable payment amounts.

EFFECTIVE DATE: These regulations are effective on March 9, 1998. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 9, 1998.

ADDRESSES: Mail an original and 3 copies of written comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1908–IFC, P.O. Box ____, Baltimore, MD 21207–5187.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following e-mail address: hcfa1908ifc@hcfa.gov. E-mail comments must include the full name, address, and affiliation (if applicable) of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1908–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT: William J. Long, (410) 786–5655.

SUPPLEMENTARY INFORMATION:

I. Background

Title XVIII of the Social Security Act (the Act) contains various methodologies for making payment under Part B of the Medicare program. These payment methodologies vary among the different categories of items and services covered under Part B.

Section 4316 of the Balanced Budget Act of 1997 (BBA), however, permits the Secretary to diverge from title XVIII's statutorily-prescribed payment methodologies if their application results in the determination of an amount that, because it is grossly excessive or deficient, is not inherently reasonable. Section 4316 of the BBA also requires the Secretary to describe the factors to be considered in determining an amount that is realistic and equitable.

The inherent reasonableness concept is not new to the statute. The Secretary has taken the position that the authority to regulate unreasonable payment amounts was inherent in section 1842 of the Act. Moreover, effective September 10, 1986, section 9304(a) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 added section 1842 (b)(8) and (b)(9) of the Act. These provisions permit the Secretary to diverge from the statutorily-prescribed payment methodologies if their application results in the determination that the payment amount for a particular service or group of services, because of its being grossly excessive or deficient, is not inherently reasonable. The statute requires the Secretary to describe in regulations the factors to be considered in determining an amount that is realistic and equitable.

Regulations implementing this provision are contained in 42 CFR 405.502 (g) and (h), which were first published in the **Federal Register** on

August 11, 1986 (51 FR 28710). These regulations describe the factors to be used in determining if the application of the reasonable charge methodology results in a charge that is grossly excessive or grossly deficient. They also describe the factors to be considered in establishing a reasonable charge that is realistic and equitable.

As implemented by the current regulations, section 1842(b)(8) of the Act applies not only to our authority to establish national reasonable charge limits, but also to our carriers' authority to establish carrier-level reasonable charge limits on grossly excessive or deficient charges.

Section 4316 of the BBA amends section 1842(b)(8) of the Act and includes the following key differences:

- It excludes physician services from application of inherent reasonableness.
- It extends the authority to establish special payment limits to Medicare carriers regardless of the methodology used for determining payment and simplifies the inherent reasonableness process for adjustments to payment amounts that are 15 percent or less.
- It allows the Secretary to streamline the factors to be considered in making an inherent reasonableness determination.

II. Provisions of this Interim Final Rule

This interim final rule revises 42 CFR 405.502 (g) and (h) by excluding references to physician services. It also deletes specific references to the reasonable charge payment methodology. We have deleted these references because the inherent reasonableness provisions apply to all Part B services, except physician services, irrespective of the payment methodology. We have also simplified the process for making adjustments to payment amounts for a category of items or services when the increase or decrease in the payment amount is no more than 15 percent. (For purposes of § 405.502 (g) and (h), a ''category of items or services'' may consist of a single item or service or any number of items or services.)

Section 4316(a) of the BBA amends section 1842(b)(8)(C) of the Act to require the Secretary to consider the following factors in making inherent reasonableness determinations concerning payment for Part B services (other than physician services):

- Medicare and Medicaid are the sole or primary sources of payment for a category of items or services.
- The payment amounts for a category of items or services do not reflect changing technology, increased facility with that technology, or changes in acquisition, production, or supplier costs.
- The payment amounts for a category of items or services are grossly higher or lower than the payments made for the same category of items or services by other purchasers in the same locality.

Amended section 1842(b)(8)(C) of the Act also permits the Secretary to consider any additional factors determined to be appropriate. Therefore, we have retained four of the five factors that appear in § 405.502(g)(1), because they remain as appropriate examples of factors that may result in deficient or excessive payment amounts. We removed the factor related to the use of new technology for which an extensive charge history does not exist, because we would not use the inherent reasonableness criteria to establish payment amounts for a category of items or services brought about by new technology. There is already in place a process for establishing payment amounts for new items or services for which an extensive charge history does not exist. The additional factors we may consider include, but are not limited to, the following:

- The market place is not competitive.
- The payment amounts in a particular locality grossly exceed amounts paid in other localities for the category of items or services.
- The payment amounts grossly exceed acquisition or production costs for the category of items or services.
- There have been increases in payment amounts that cannot be explained by inflation or technology.

When we implemented section 9304(a) of COBRA of 1985, we interpreted the law as codifying both our authority and a carrier's authority to establish realistic and equitable payment amounts. We are interpreting the provisions of section 4316 of the BBA in the same way. Thus, these final regulations describe the circumstances and factors we and our carriers will use in setting realistic and equitable payment amounts if the existing payment amounts are grossly excessive or deficient.

Section 4316 of the BBA amends section 1842(b)(8) of the Act by adding provisions that apply if a reduction or increase would vary the payment amount by less than 15 percent ''during any year.'' (Other provisions apply to larger increases and decreases.) By its own terms, the 15-percent variance applies to the amount of an inherent reasonableness adjustment for any given year. Under this authority, we (or a carrier) may determine that more than a 15-percent adjustment is warranted, but we may choose to apply only a 15-percent adjustment in any given year and use the ''15 percent'' methodology. For example, we (or a carrier) may determine that a 25-percent reduction is warranted. However, the adjustment could be accomplished over 2 years—15 percent applied the first year, and 10 percent applied the following year.

Other than these changes and some minor modifications, the revised regulations are the same as the final regulations that were published in the **Federal Register** (53 FR 26067) on July 11, 1988.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments that we receive by the date and time specified in the DATES section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that it is unnecessary to publish this regulation as a proposed rule since it is not significantly changing the existing methodology for application of the inherent reasonableness process. This process has been specified in regulations since 1986. We also believe that it would be contrary to the public interest to delay implementation of these regulations by publishing a proposed rule. Finalizing this rule is clearly in the interest of the public because affording notice and opportunity for comment would postpone the time that limits may be established on grossly excessive charges and would unnecessarily impede further savings to the Medicare trust fund and beneficiaries. We believe that it is contrary to the public interest to provide a notice of proposed rulemaking since it would delay the implementation of these provisions.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day comment period for public comment.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. For purposes of the RFA, all suppliers of Medicare Part B services are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We expect suppliers of Part B services, other than physician services, to be affected by this rule. We do not have sufficient data to predict exactly the nature of the impact of this rule or the magnitude of such impact. Below, we discuss likely outcomes.

Should the provisions of these regulations be applied, the resultant payment amounts will no longer be grossly excessive or deficient. If a payment amount is adjusted upward because it is deficient, it will benefit suppliers and beneficiaries. A more generous payment amount may result in greater availability of items and services to Medicare beneficiaries. The converse may not be true if the payment amount is adjusted downward. A lower payment amount should not necessarily result in a lack of availability of items and services since the revised payment amount would be realistic and equitable. We believe that a realistic and equitable payment amount would ensure continued availability of items and services. Thus, we believe that the application of an adjustment will merely serve as a vehicle for eliminating windfall profits. This adjustment will benefit the Medicare program by reducing costs and benefit beneficiaries by reducing coinsurance payments.

For these reasons, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Part 405 is amended as set forth below:

1. The authority citation for part 405, subpart E, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 405.502, paragraphs (g) and (h) are revised to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(g) *Determination of payment amounts in special circumstances*—(1) *General.* (i) For purposes of this paragraph, a ''category of items or services'' may consist of a single item or service or any number of items or services.

(ii) HCFA or a carrier may determine that the standard rules for calculating Part B payment amounts for a category of items or services identified in section 1861(s) of the Act (other than physician services paid under section 1848 of the Act) will result in grossly deficient or excessive amounts.

(iii) If HCFA or the carrier determines that the standard rules for calculating payment amounts for a category of items or services set forth in this subpart will result in grossly deficient or excessive amounts, HCFA or the carrier may establish special payment limits that are realistic and equitable for a category of items or services.

(iv) The limit on the payment amount is either an upper limit to correct a grossly excessive payment amount or a lower limit to correct a grossly deficient payment amount.

(v) The limit is either a specific dollar amount or is based on a special method to be used in determining the payment amount.

(vi) Except as provided in paragraph (h) of this section, a payment limit for a given year may not vary by more than 15 percent from the payment amount established for the preceding year.

(vii) *Examples of excessive or deficient payment amounts.* Examples of the factors that may result in grossly deficient or excessive payment amounts include, but are not limited to, the following:

(A) The marketplace is not competitive. This includes circumstances in which the marketplace for a category of items or services is not truly competitive because a limited number of suppliers furnish the item or service.

(B) Medicare and Medicaid are the sole or primary sources of payment for a category of items or services.

(C) The payment amounts for a category of items or services do not reflect changing technology, increased facility with that technology, or changes in acquisition, production, or supplier costs.

(D) The payment amounts for a category of items or services in a particular locality are grossly higher or lower than payment amounts in other comparable localities for the category of items or services, taking into account the relative costs of furnishing the category of items or services in the different localities.

(E) Payment amounts for a category of items or services are grossly higher or lower than acquisition or production costs for the category of items or services.

(F) There have been increases in payment amounts for a category of items or services that cannot be explained by inflation or technology.

(G) The payment amounts for a category of items or services are grossly higher or lower than the payments made for the same category of items or services by other purchasers in the same locality.

(2) *Establishing a limit.* In establishing a payment limit for a category of items or services, HCFA or a carrier considers the available information that is relevant to the category of items or services and establishes a payment amount that is realistic and equitable. The factors HCFA or a carrier consider in establishing a specific dollar amount or special payment method for a category of items or services may include, but are not limited to, the following:

(i) *Price markup.* This is the relationship between the retail and wholesale prices or manufacturer's costs of a category of items or services. If information on a particular category of items or services is not available, HCFA or a carrier may consider the markup on a similar category of items or services and information on general industry pricing trends.

(ii) *Differences in charges.* HCFA or a carrier may consider the differences in charges for a category of items or services made to non-Medicare and Medicare patients or to institutions and other large volume purchasers.

(iii) *Costs.* HCFA or a carrier may consider resources (for example, overhead, time, acquisition costs, production costs, and complexity) required to produce a category of items or services.

(iv) *Utilization.* HCFA or a carrier may impute a reasonable rate of use for a category of items or services and consider unit costs based on efficient utilization.

(v) *Payment amounts in other localities.* HCFA or a carrier may consider payment amounts for a category of items or services furnished in another locality.

(3) *Notification of limits*—(i) *National limits.* HCFA publishes in the **Federal Register** proposed and final notices announcing a special payment limit described in this paragraph (g) before it adopts the limit. The notices set forth the criteria and circumstances, if any, under which a carrier may grant an exception to a payment limit for a category of items or services.

(ii) *Carrier-level limits.* A carrier proposing to establish a special payment limit for a category of items or services must inform the affected suppliers and State Medicaid agencies of the factors it considered in determining and in establishing the limit, as described in paragraphs (g)(1) through (g)(3) of this section, and solicit comments. The carrier must evaluate the comments it receives and inform the affected suppliers, State Medicaid agencies, and HCFA of any final limits it establishes. HCFA acknowledges in writing to the carrier that it received the carrier's notification. After the carrier has received HCFA's acknowledgement, the limit may be effective for services furnished at least 30 days after the date of the carrier's notification.

(h) *Special payment limit adjustments greater than 15 percent of the payment amount.* In addition to applying the general rules under paragraphs (g)(1) through (g)(3) of this section, HCFA applies the following rules in determining and establishing a payment adjustment greater than 15 percent of the payment amount for a category of items or services within a year:

(1) *Potential impact of special limit.* HCFA considers the potential impact on quality, access, beneficiary liability, assignment rates, and participation of suppliers.

(2) *Supplier consultation.* Before making a determination that a payment amount for a category of items or services is not inherently reasonable by reason of its grossly excessive or deficient amount, HCFA consults with representatives of the suppliers likely to be affected by the change in the payment amount.

(3) *Publication of national limits.* If HCFA determines under this paragraph (h) to establish a special payment limit for a category of items or services, it publishes in the **Federal Register** proposed and final notices of a special payment limit before it adopts the limit. The notice sets forth the criteria and circumstances, if any, under which a carrier may grant an exception to the limit for the category of items or services.

(i) *Proposed notice.* The proposed notice——

(A) Explains the factors and data that HCFA considered in determining that the payment amount for a category of items or services is grossly excessive or deficient;

(B) Specifies the proposed payment amount or methodology to be established with respect to a category of items or services;

(C) Explains the factors and data that HCFA considered in determining the payment amount or methodology, including the economic justification for a uniform fee or payment limit if it is proposed;

(D) Explains the potential impacts of a limit on a category of items or services as described in paragraph (h)(1) of this section; and

(E) Allows no less than 60 days for public comment on the proposed payment limit for the category of items or services.

(ii) *Final notice.* The final notice——

(A) Explains the factors and data that HCFA considered, including the economic justification for any uniform fee or payment limit established; and

(B) Responds to the public comments.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: December 12, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: December 30, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 98–269 Filed 1–6–98; 8:45 am]

BILLING CODE 4120–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1505, 1514, 1537, 1548, and 1552

[FRL–5945–5]

Technical Amendments to Acquisition Regulation; Removal of Outdated or Unnecessary Coverage: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On October 24, 1996 (61 FR 55118), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the removal from EPA Acquisition Regulations of outdated or unnecessary coverage on Exchange of Acquisiton Information, Past Performance, Advisory and Assistance Services, and Policies and Procedures on Value Engineering. This rule established an effective date of October 24, 1996. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Koontz at (202) 260–8608.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on October 24, 1996, by operation of law, the rule did not take effect on October 24, 1996 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act 5, U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since October 24, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 24, 1996 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 98–265 Filed 1–2–98; 1:34 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[FRL–5943–5]

Technical Amendments to Acquisition Regulation: Limitation of Future Contracting: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On February 5, 1997 (62 FR 5347), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the Acquisition Regulation Limitation of Future Contracting, which established an effective date of March 7, 1997. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Koontz at (202) 260–8608.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated February 5, 1997, by operation of law, the rule did not take effect on March 7, 1997 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since February 5, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995

(Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the February 5, 1997 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a ''major rule'' as defined in 5 U.S.C 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

List of Subjects in 48 CFR Part 1552

Environmental protection, Government procurement.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Section 1552.209–74 [Amended]

2. Section 1552.209–74 is amended by revising the date in the clause heading to read ''(Dec 1997)''.

3. Section 1552.209–74 is amended by revising the date in the clause heading for Alternate I to read ''(Dec 1997)''.

4. Section 1552.209–74 is amended by revising the date in the clause heading for Alternate II to read ''(Dec 1997)''.

5. Section 1552.209–74 is amended by revising the date in the clause heading for Alternate III to read ''(Dec 1997)''.

6. Section 1552.209–74 is amended by revising the date in the clause heading for Alternate IV to read ''(Dec 1997)''.

7. Section 1552.209–74 is amended by revising the date in the clause heading for Alternate VI to read ''(Dec 1997)''.

[FR Doc. 98–261 Filed 1–5–98; 9:16 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD06

Endangered and Threatened Wildlife and Plants; Endangered Status for Brother's Island Tuatara

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The Service determines endangered status for the Brother's Island tuatara (*Sphenodon guntheri*), a reptile of New Zealand. Although already legally covered by an endangered classification, this species previously was considered part of the related and more widespread tuatara, *Sphenodon punctatus.* Both species are threatened by various factors, especially predation from introduced rats. This rule continues the protection of the Endangered Species Act of 1973, as amended (Act), for the Brother's Island tuatara.

EFFECTIVE DATE: February 6, 1998.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203. Express, messenger-delivered, and regular mail should be sent to the Office of Scientific Authority at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority at the above address (phone 703–358–1708; FAX 703–358–2276).

SUPPLEMENTARY INFORMATION:

Background

Tuataras are a unique group of lizard like reptiles now restricted to New Zealand and represented by the single genus *Sphenodon.* Because of excessive human hunting and predation by introduced animals, especially rats, tuatara are now found only on various small island off the coast of the two main islands of New Zealand. For many years, the prevailing view among zoologists was that the living tuataras represented only the single species *Sphenodon punctatus,* and that was the only species on the U.S. List of Endangered and Threatened Wildlife (June 2, 1970; 35 FR 8495).

A recent paper (Daugherty. C.H., A. Cree, J.M. Hay, and M.B. Thompson, 1990. ''Neglected taxonomy and continuing extinctions of tuatara.'' *Nature:* 347:177–179) pointed out that, based on a morphological and genetic analysis, a second species. *S. guntheri.* survived on North Brother Island in Cook Strait. *S. guntheri* actually had been first described in 1877, but over time had come to be regarded as just a component of *S. punctauts.* The population of tautara on North Brother Island was known at the time that *S. punctatus* was listed as endangered pursuant to the Act and was considered to be a population of *S. punctatus.* The recognition of S. guntheri as a distinct species may provide it with increased conservation attention, thereby helping to ensure its continued survival on the one small island from which it is known. This listing also will reduce the likelihood of someone assuming that the species is not protected and perhaps unintentionally illegally trading in the species.

The above technical paper explaining the status of *S. guntheri* was only recently brought to the attention of the U.S. Fish and wildlife Service (Service) through the kindness of Ms. Cheri L. Hosley of Brownstown, Michigan. Subsequently, the Service contacted several authorities, who supported recognition of *S. guntheri* as a distinct species, and also the Government of New Zealand, which responded favorably. Finally, the World Conservation Union's *1996 IUCN Red List of Threatened Animals* designates *S. guntheri* as a full species, with a classification of vulnerable.

The above information persuaded the Service of the need to distinguish *S. guntheri* as a separate species on the List of Endangered and Threatened Wildlife and to classify it as endangered, together with *S. punctatus. A* proposed rule to such effect was published in the **Federal Register** of January 26, 1995 (60 FR 5159–5162). All interested parties were requested to submit information that might contribute to development of a final decision. A cable was sent to the United States Embassy in New Zealand, requesting new data and comments of the Government of New Zealand, which again responded favorably. No other responses were received. It is emphasized that the reptiles included within the originally listed taxon *S. punctatus* (now divided into *S. punctatus* and *S. guntheri*) were already legally covered by an endangered species classification and will remain so under this rule. This rule does not impact or otherwise change the status of either species and does not affect the kinds of activities that are permitted or prohibited. It is intended to eliminate confusion by bringing the listing status of the species into conformity with current taxonomy.

Summary of Factors Affecting the Species

After a thorough review and consideration of all scientific and commercial information available, the Service has determined that the Brother's Island tautara should be classified as endangered. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the following five factors described in Section 4(a)(1). These factors and their application to the Brother's Island tauatra (*Sphenodon guntheri*) are as follows (information from Daugherty *et al.* 199, as indicated above):

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Sphenodon guntheri is known only from North Brother Island in Cook Strait, New Zealand. The island has an area of only about 10 acres (4 hectares), and the tuatara population is restricted to only about 4.2 acres (1.7 hectares) of scrub habitat on top of the island. The population consists of fewer than 300 adults. Introduced rats, rabbits, goats, and other animals have damaged habitat of other tuatara populations and could potentially do the same on North Brother Island.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not currently known to be a problem. However, automation of the island lighthouse in 1990 led to departure of the resident keepers who had deterred illegal landings and poaching for 123 years. The very small tuatara population could thus be vulnerable to human hunting and harassment.

C. Disease or Predation

Predation by introduced rats, dogs, cats, and pigs have been severe problems for other tuatara populations. Deliberate or accidental introduction of even a few such animals on North Brother Island could be disastrous for the tiny tuatara population there. Departure of the lighthouse keepers and failure to recognize *S. guntheri* as a unique species warranting special conservation attention could open the way for such a disaster.

D. The Inadequacy of Existing Regulatory Mechanisms

Although all tuataras have long received complete legal protection, there has been no recognition of separate, highly restricted species or subspecies, such as *S. guntheri*, that might require special protection and management to survive. The departure of the lighthouse keepers from North Brother Island in 1990 has made *S. guntheri* especially vulnerable in this regard.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Small and restricted animal populations, especially if adversely affected through human activity, are highly susceptible to natural disasters and to reduction of genetic viability.

The decision to determine endangered status for the Brother's Island tuatara was based on an assessment of the best available scientific information, and of past, present, and probable future threats to this species. It occurs in very small numbers in a highly restricted range and is vulnerable to a variety of problems. If this reptile is not given appropriate recognition and protection, extinction will become more likely. Critical habitat is not being determined, as such designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such activities are currently known with respect to the species covered by this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In addition, regulations on general permit procedures and on the importation, exportation, and transportation of wildlife are codified at 50 CFR parts 13 and 14.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Author: The primary author of this rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (phone 703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for ''Tuatara'' under REPTILES and adding an entry for ''Tuatara, Brother's Island'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
REPTILES							
*	*	*	*	*	*	*	
Tuatara	*Sphenodon punctatus.*	New Zealand	Entire	E	3. __	NA	NA
Tuatara, Brother's Island.	*Sphenodon guntheri*	New Zealand (N. Brother Is.).	Entire	E	3. __	NA	NA
*	*	*	*	*	*	*	

Dated: October 30, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–246 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register

Vol. 63, No. 4

Wednesday, January 7, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Account Identification for Eligible Bunched Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is reproposing to amend Commission Regulation 1.35(a–1) to allow eligible customer orders to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution.[1] Specifically, the amendment would exempt from the customer account identification requirements of Regulation 1.35(a–1) (1), (2)(i), and (4) bunched futures and/or futures option orders placed by an eligible account manager on behalf of consenting eligible customer accounts as part of its management of a portfolio also containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from regulation under the Commodity Exchange Act (''Act''). The proposed rule would permit orders entered on behalf of these accounts to be allocated no later than the end of the day on which the order is executed.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to ''Eligible orders.''

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Current Regulatory Requirements

Commission regulations specify that customer orders must be recorded promptly and include customer account identification at the time of entry and the time of report of execution. These recordkeeping requirements, in effect since March 24, 1972, permit a specific customer's order to be traced at each stage of the order processing system and help to prevent the improper allocation of trades and other abuses. Specifically, Commission Regulation 1.35(a–1)(1) requires that each futures commission merchant (''FCM'') and each introducing broker (''IB'') receiving a customer's order immediately prepare a written record of that order, which includes an account identifier for that customer. Regulation 1.35(a–1)(2)(i) requires that each member of a contract market who receives a customer's order on the floor of a contract market that is not in writing immediately prepare a written record of that order, including the appropriate customer account identification. Regulation 1.35(a–1)(4) requires, among other things, that each member of a contract market reporting the time of execution of a customer's order from the floor of a contract market include the account identification on a written record of that order.

B. Proposed Amendment to CME Rule 536

By letters dated February 24, 1992, CME submitted both a proposed amendment to CME Rule 536 pursuant to Section 5a(12) of the Act,[2] 7 U.S.C. 1 *et seq.*, and a petition for rulemaking to amend Commission Regulation 1.35(a–1) pursuant to Commission Regulation 13.2.[3] As discussed below, the Commission published requests for comments on both submissions.

The proposed CME rule amendment would have exempted from the customer account designation requirement certain orders entered by investment advisers registered with the Securities and Exchange Commission (''SEC'') pursuant to the Investment

[1] The Commission published a proposed amendment to Regulation 1.35(a–1) on May 3, 1993. 58 FR 26270 (May 3, 1993).

[2] Now redesignated as Section 5a(a)(12)(A).

[3] The Exchange submitted additional information regarding the proposed rule amendment in letters dated May 7, 1992, and August 12, 1992. By letter dated August 20, 1992, the Division of Trading and Markets posed a series of questions to the Exchange. The CME responded in a letter dated September 25, 1992.

Advisers Act of 1940, 15 U.S.C. 80b *et seq.* [1988], and banks, insurance companies, trust companies, and savings and loan institutions subject to federal or state regulation (''account managers'').[4] These orders could have been placed only for certain specified institutional accounts whose owners had been notified in writing that their orders were being placed without customer account designations. The orders would have been required to be allocated among participating accounts prior to the end of the day. Finally, the individual or firm directing the allocation of the orders could not have a proprietary interest in any account that received any part of the order, and no related-party account could receive any part of the order.

On June 8, 1992, the Commission published the proposed amendment to CME Rule 536 for public comment.[5] The Commission received 31 comments in response to the CME's proposal. Twenty-six of the comments evidenced support for the proposed rule amendment, four were opposed to the amendment,[6] and one recommended caution.[7] Those comments were addressed in the Commission's subsequent proposed amendment to Regulation 1.35 and are not addressed herein.

C. Proposed Amendment to Regulation 1.35(a–1)

On May 3, 1993, the Commission published proposed amendments to Regulation 1.35(a–1) for public comment.[8] In addition to amending Regulations 1.35(a–1)(1), (2), and (4), the Commission proposed to add paragraphs 1.35(a–1)(5) and (6). Paragraph (5) addressed the placement and allocation of bunched orders generally and the use of predetermined allocation formulas. Paragraph (6) was the Commission's followup to CME's proposal to permit the allocation of certain bunched orders at the end of the day.

1. Predetermined Allocation Formulas

Proposed Regulation 1.35(a–1)(5) would have permitted the placement of a bunched order for multiple customer accounts without individual customer account identification at the time of entry and the time of report of execution, subject to certain requirements.[9] Proposed Regulation 1.35(a–1)(5) is being withdrawn because it has been superseded. On May 9, 1997, the Commission published a Notice of Interpretation and Approval Order approving the National Futures Association (''NFA'') Interpretative Notice to NFA Compliance Rule 2–10 Relating to the Allocation of Block Orders for Multiple Accounts and providing additional Commission guidance regarding bunched orders and allocation procedures.[10] The guidance provided therein has been published as Appendix C to Part One of the Commission's regulations.

2. End-of-Day Allocation to Eligible Customers

Under proposed Regulation 1.35(a–1)(6), contract markets could have submitted rules for Commission approval that would have exempted certain orders from the requirement that a specific customer account be identified at the time of entry and the time of report of execution if specified requirements were met. These orders could have been allocated at the end of the day. The specific requirements of the proposal addressed: (a) Eligible orders, (b) eligible account managers, (c) eligible customers, (d) account certification, (e) allocation requirements, (f) account manager recordkeeping, and (g) contract market rule enforcement programs. The Commission stated that the proposed regulation would encourage and facilitate institutional participation in the futures markets subject to customer protection requirements that were consistent with the sophistication of the institutional customers.

The Commission received 34 comments in response to the proposed amendments to Regulation 1.35(a–1).[11] Commenters included eleven FCMs;[12] one investment adviser registered with the SEC;[13] seven firms registered with both the Commission and the SEC;[14] four commodity trading advisors (''CTA'');[15] three industry associations;[16] the CME, the Chicago Board of Trade (''CBT''), and the NFA.[17]

Most commenters found the proposed rule burdensome and too restrictive to be of value. In particular, these commenters objected to the proposed requirement for an intermarket trading strategy involving securities and to the recordkeeping and certification requirements. Two comments from the same commenter opposed the proposal,[18] and one raised concerns about money laundering.[19] The Commission has carefully reviewed the comments received and, as a result, has modified and clarified the proposed amendments to Regulation 1.35(a–1). Comments addressing specific areas and an explanation of the Commission's revisions are discussed below.

[4] The term *account manager* hereinafter is used to include investment advisers and other persons identified in the proposed regulation, and their principals, if any, who would place orders and direct the allocation thereof in accordance with the procedures set forth in the reproposed amendment.

[5] 57 FR 24251.

[6] Commenters opposed to approval of the proposed rule amendment included a Commission Administrative Law Judge; his law clerk; the Director, Office of Financial Enforcement, Department of the Treasury; and the Chief, White-Collar Crimes Section, Criminal Investigative Division, Federal Bureau of Investigation. These commenters expressed concern that, by weakening the audit trail, the proposal could facilitate misallocation, money laundering and tax evasion.

[7] The United States Attorney for the Northern District of Illinois urged that the Commission ''exercise great care before taking any action that could provide any opportunity for fraud, self-dealing, or other criminal activity.''

[8] 58 FR 26274 (May 3, 1993).

[9] Those requirements included providing an allocation formula for allocating the fills fairly among the participating accounts. Directing profitable fills to favored accounts and unprofitable fills to unfavored accounts (preferential allocation) is a violation of Section 4b of the Act. In the Matter of GNP Commodities, Inc., et al., [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,214 (CFTC August 11, 1992); In the Matter of Lincolnwood Commodities, Inc., of California, et al., [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,246 (CFTC January 31, 1984).

[10] 62 FR 25470 (May 9, 1997).

[11] Only those comments addressing proposed paragraph 1.35(a–1)(6) are addressed herein.

[12] BA Futures, Inc. (''BA''); Cargill Investor Services (''Cargill''); Credit Agricole Futures, Inc. (''Credit Agricole''), which is also registered as a CTA; Dean Witter Reynolds, Inc., Futures Division (''Dean Witter''); First Boston Corporation (''First Boston''); Lind-Waldock & Company (''Lind-Waldock''); PaineWebber Incorporated (''PaineWebber''); Refco, Inc. (''Refco''); Rodman & Renshaw, Inc. (''Rodman''); Sanwa-BGK Futures, Inc. (''Sanwa-BGK''); and Saul Stone and Company (''Saul Stone'').

[13] Pacific Investment Management Company (''Pacific'').

[14] Bear, Stearns & Co., Inc. (''Bear Stearns''); Flaherty & Crumrine Inc. (''Flaherty''); Goldman, Sachs & Co. (''Goldman Sachs''); Indosuez Carr Futures, Inc. (''Carr''); Merrill Lynch; Morgan Stanley & Co. (''Morgan Stanley''); and TSA Capital Management (''TSA'').

[15] Campbell Company (''Campbell''); John W. Henry & Co., Inc. (''John Henry''); Leland O'Brien Rubinstein Associates Inc. (''Leland''); and Sunrise Commodities, Inc. (''Sunrise'').

[16] Futures Industry Association (''FIA''), Managed Futures Association (''MFA''), and Investment Company Institute (''ICI'').

[17] The Commission also received comments from the New York City Bar Association (''N.Y. Bar'') and a law firm, Abramson and Fox.

[18] The commenter, who submitted two comments, was a Commission Administrative Law Judge. He opposed the proposal because of the potential for fraud, money laundering and tax evasion. He further commented that the industry has failed to articulate a compelling need and that the real reason to do so, the desire to increase account managers' flexibility and conform commodity regulation to security regulation, does not justify adoption of a system so open to abuse.

[19] The Chief, Money Laundering Section, Criminal Division, Department of Justice, asked that the Commission consider the proposal's impact on future money laundering and other law enforcement investigations.

II. Reproposed Amendment to Commission Regulation 1.35(a–1)

The Commission is reproposing to amend Regulation 1.35(a–1). Under reproposed Regulation 1.35(a–1)(5) (formerly 1.35(a–1)(6)), a specific customer's account identifier need not be recorded at the time an eligible bunched order (''eligible order'') is placed or upon report of execution, and the order may be allocated by the end of the day on which it is executed, provided that certain requirements are met. In addition, the order must be handled in accordance with contract market rules that have been submitted to the Commission and approved or permitted into effect pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41. The Commission intends that this reproposal include certain core regulatory protections while providing meaningful regulatory relief in a manner which is responsive to the comments previously received. In the discussion below, the Commission sets forth each of the components of its 1993 proposal, a summary of the comments then received, and the manner in which the reproposal addresses the same issue.

A. Eligible Orders

1. Proposed Regulation 1.35(6)(a–1)(i)

Proposed Regulation 1.35(6)(a–1)(i) would have required that orders entered and allocated pursuant to the proposed regulation must be intermarket orders. The term *intermarket* order was defined as a futures or futures option order entered on behalf of an eligible customer as part of a bona fide intermarket trading strategy also involving securities. The term ''securities'' was defined to mean equity or debt securities within the meaning of Section 2(1) of the Securities Act of 1933.

This requirement was based on the stated rationale for allowing post-trade allocation, which was to permit account managers to provide equivalent treatment to customers' accounts traded pursuant to strategies involving activity in both futures markets and securities markets. For example, if a securities trade is allocable at the end of the day and the account manager follows a strategy of buying securities and selling futures, with the futures order to be executed throughout the day, the account manager may need to await the results of all transactions before allocating to the accounts so as to provide equivalent treatment. Similarly, for strategies such as duration management, where futures transactions are executed on the basis of a change in interest rates that affects the price of the bonds in an underlying portfolio, the procedure could be used to maintain positions of a specified duration under circumstances when this result could not be achieved through the use of a predetermined allocation formula.

2. Comments Received

With regard to the proposal's description of eligible orders, most commenters focussed on two issues: the definition of ''intermarket'' and the definition of ''securities.'' Numerous commenters suggested that the proposal should not be limited to intermarket strategies based on a securities requirement and suggested expanding the definition of ''intermarket'' to include trading strategies that did not involve securities directly.[20] In addition to concerns about the definition of intermarket, several commenters voiced the opinion that the definition of ''securities'' was too restrictive.[21] Several commenters indicated that the proposal appeared to require a transaction test, *i.e.*, that the securities and futures executions would be required to occur simultaneously.[22]

3. Reproposed Regulation 1.35(a–1)(5)(i)

After consideration of the comments, the Commission believes that it would be appropriate to delete the term ''intermarket'' as the descriptive term used to identify eligible orders. The Commission also agrees with the commenters in recognizing that appropriate multi-market investment management strategies can involve futures and/or futures options and financial instruments other than securities. Thus, the Commission is proposing to eliminate the requirement that the trading strategy also involve securities. The Commission also wants to make clear that eligible orders would be subject to a portfolio test and not a transaction test.

As previously noted, the overriding rationale for allowing post-trade allocation is to permit equivalent treatment of customers' accounts traded pursuant to strategies involving trading activity or changes in valuation in more than one market. The Commission believes that the account manager, in his or her role as a fiduciary, should be permitted to determine that the portfolio management strategy requires the placement of this type of order. Generally, this situation exists when accounts are being traded in more than one market and the account manager must review the results of trading activity in all markets prior to directing order allocation in order to assure fairness. Of course, it would not be permissible for a purported portfolio to be established solely to obtain the relief being proposed. Rather, the other financial instruments included in the portfolio must have a legitimate financial relationship to the futures or futures option orders for post-trade allocation to be appropriate.

Where trades are executed only on domestic futures exchanges, the account manager should be able to achieve equivalent treatment of customers' accounts while complying with either the existing customer account identifier requirements of Regulation 1.35(a–1)(1) and (2)(i) or the predetermined allocation formula exceptions thereto as described in Appendix C to Part One of the Commission's regulations. In particular, for futures-only orders executed on one domestic futures exchange, average pricing would be available to provide fair treatment among customers. Accordingly, the Commission is proposing that to be eligible, orders must be placed as part of the management of a portfolio also containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Act.

The Commission has been advised that there may be instances where a CTA placing exchange traded futures-only orders on more than one futures exchange may need post-trade allocation in order to achieve equivalent treatment of customers' accounts. The Commission requests comments with regard to whether that relief is necessary. Any comments should provide specific examples illustrating why the use of predetermined allocation formulas or average pricing is insufficient to provide fair treatment.

[20] Bear Stearns, Dean Witter, Goldman Sachs, Carr, Morgan Stanley, Lind-Waldock, TSA, NFA, ICI, N.Y. Bar, CME and CBT.

CME stated that many other instruments, such as forex and commodity and interest rate swaps, are used as part of investment strategies and should not be excluded from the proposed amendments. CBT commented that the exemption should cover strategies that include foreign products and off-exchange products such as swaps. The ICI stated that the ''intermarket'' requirement should be deleted and that all orders entered on behalf of investment companies that are registered with the SEC under the Investment Company Act of 1940 should be presumed to be eligible orders.

[21] Bear Stearns, Dean Witter, Lind-Waldock, Merrill Lynch, and Pacific.

[22] The CME noted that a requirement that the futures and securities executions must occur simultaneously would inhibit the use of duration adjustments, overlay, and other strategies. Goldman Sachs commented that the Commission should make clear that the proposed rule did not require that the futures transaction be related to specific securities transactions, provided that it is related to the management of a securities portfolio. Morgan Stanley voiced similar concerns.

B. Eligible Account Managers

1. Proposed Regulation 1.35(a–1)(6)(ii)

Proposed Regulation 1.35(a–1)(6)(ii) would have required that the person placing and/or directing the allocation of an eligible order and its principal, if any, (''account manager'') must be one of the following which had been granted investment discretion with regard to the eligible customer accounts:

(i) an investment adviser registered with the SEC pursuant to the Investment Advisers Act of 1940, or

(ii) a bank, insurance company, trust company, or savings and loan association subject to federal or state regulation.

As proposed, the class of persons eligible to place intermarket orders and direct the end-of-day allocation thereof would have been identical to that suggested by CME. The Commission believed that, when managing multiple accounts, these entities might be better able to achieve similar results for institutional accounts being traded pursuant to a program which involved multi-market trading strategies. Under the proposed regulation, account managers for these types of accounts would have been able to allocate futures and futures option trades in the same manner as they allocated trades on securities exchanges and over-the-counter markets.[23] Additionally, these entities' fiduciary activities were subject to oversight by various state or federal regulatory agencies.

2. Comments Received

Numerous commenters suggested that the list of eligible account managers be expanded to include other entities. The suggested additional entities include CTAs,[24] foreign investment advisers subject to regulation in their home jurisdiction,[25] non-U.S. investment advisers registered with the Commission or otherwise exempt from registration pursuant to Regulation 30.10,[26] and investment advisers exempt from SEC registration under Section 203(b)(3) of the Investment Advisers Act of 1940.[27] Finally, CBT proposed that the proposal should be modified to afford sufficient flexibility to allow exchanges to include any account manager that is regulated and subject to fiduciary liability.

3. Reproposed Regulation 1.35(a–1)(5)(ii)

After consideration of the comments, the Commission believes that it is appropriate to expand the list of eligible account managers to include CTAs registered with the Commission pursuant to the Act.[28] Because CTAs also attempt to achieve equivalent treatment of customers' accounts traded pursuant to strategies involving trading activity in more than one market, the Commission believes that the relief afforded by this provision should be extended to these account managers. In addition, CTAs are subject to Commission and NFA regulatory requirements and oversight, including periodic audits by the NFA.

The Commission is not including as eligible account managers non-U.S. investment advisers registered with the Commission or otherwise exempt from registration pursuant to Regulation 30.10 and foreign investment advisers subject to regulation in their home jurisdiction. The Commission is concerned about potential difficulty in auditing these entities and in obtaining documentation required to be made available pursuant to the recordkeeping requirements discussed below. The Commission specifically requests comments concerning this determination. The Commission also requests comments with regard to its determination not to include, at present, investment advisers exempt from SEC registration under Section 203(b)(3) of the Investment Advisers Act of 1940.

C. Eligible Customers

1. Proposed Regulation 1.35(a–1)(6)(iii)

(a). 1.35(a–1)(6)(iii)(A)—Types of Customers

Proposed Regulation 1.35(a-1)(6)(iii)(A) provided that intermarket orders could be allocated to accounts maintained by any of the following institutional customers:

(i) An Investment Company registered as such under the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.* [1988].

(ii) A bank, trust company, insurance company or savings and loan association subject to federal or state regulation.

(iii) An account for which a bank, trust company, insurance company or savings and loan association subject to federal or state regulation is a fiduciary vested with investment discretion.

(iv) A corporate qualified pension, profit sharing, or stock bonus plan subject to Title 1 of the Employee Retirement Income Security Act of 1974 (''ERISA''), or any plan defined as a governmental plan in Section 3(32) of Title 1 of such Act, but not including a self-directed plan.

(v) An educational endowment, foundation, charitable institution or trust which is organized or qualifies under Section 501(c)(3) of the Internal Revenue Code with net assets of more than $100 million.

This group of proposed eligible customers was substantially the same as that included in the proposed amendment to CME Rule 536. The CME and certain institutional customers represented that professional managers of multi-market portfolios needed the flexibility afforded by CME's proposed rule amendment to treat similarly managed accounts fairly. Further, the Commission believed that those customers were institutional investors whose accounts were subject to other regulatory regimes or a portfolio size requirement and who participated in multi-market investment strategies. Therefore, these customers could benefit from use of the proposed regulation. The Commission further believed the proposed eligible customer accounts were owned by entities with the capacity to review and evaluate the accounts' trading activity and results.

(b). 1.35(a–1)(6)(iii)(B)—Proprietary Interest

Proposed Regulation 1.35(a–1)(6)(iii)(B) provided that the following persons may have no interest in any account that receives any part of such order or in any related securities account:

(i) The account manager;

(ii) The futures commission merchant allocating the order;

(iii) Any general partner, officer, director, or owner of ten percent or more of the equity interest in the account manager or the futures commission merchant allocating the order;

[23] *See, e.g.,* Interpretation 88–3 of New York Stock Exchange Rule 410(a)(3): ''Member organizations may accept block orders and permit investment advisors to make allocations on such orders to customers and remain in compliance with Rule 410(a)(3) provided that the organizations receive specific account designations or customer names by the end of the business day.'' *See also* Securities and Futures Authority Rule Book. Rule 5–41 allows a firm to aggregate customers' orders when it is unlikely to disadvantage the customer and the firm has disclosed that orders may be aggregated. Rule 5–34(13), averaging of prices, allows a firm to execute a series of transactions within a 24-hour period to meet orders it has aggregated. When a firm has aggregated orders, Rule 5–42 specifies that the firm must not give unfair preference and if all the orders cannot be satisfied, the firm generally must give priority to satisfying customer orders.

[24] Campbell, First Boston, John Henry, Merrill Lynch, Morgan Stanley, PaineWebber, FIA, and NFA. The N.Y. Bar recommended that CTAs be considered after the rule had been evaluated.

[25] First Boston, Goldman Sachs, Merrill Lynch, and Morgan Stanley.

[26] Carr and N.Y. Bar.

[27] First Boston and N.Y. Bar.

[28] Where applicable, the employing firm of an account manager should have appropriate internal controls in place to address the added discretion that the account manager will be able to exercise pursuant to this proposal.

(iv) Any employee or associated person or limited partner of the account manager or the futures commission merchant allocating the order who affects or supervises the handling of the order;

(v) Any business affiliate that, directly or indirectly, controls, is controlled by, or is under common control with, the account manager or the futures commission merchant allocating the order;

(vi) An employee benefit plan of the account manager, the futures commission merchant allocating the order, or an affiliate, as defined in subparagraph (v) above; or

(vii) Any spouse, parent, sibling, or child of the foregoing persons.

The Commission believed, based on its experience with misallocation of trades, that the ability to allocate fills between customer and proprietary accounts subsequent to execution would have created an unacceptably high potential for favoring the proprietary accounts.[29] The Commission further believed that the ability to allocate fills subsequent to execution while maintaining a proprietary interest in a related securities account also would have created an unacceptably high potential for abuse.[30] The Commission, therefore, believed that prohibiting the account manager, the allocating FCM, and their related or affiliated persons, from having any interest in either the futures or a related securities account was a preventive approach that effectively eliminated the possibility of preferential allocation for personal gain.

2. Comments Received

(a). 1.35(a–1)(6)(iii)(A)—Types of Customers

Numerous commenters suggested that the list of eligible customers be expanded to include other entities. Several commenters suggested that the list be expanded to include ''appropriate persons'' as described in Section 4(c)(3) of the Act[31] or eligible swap participants.[32] One commenter suggested expanding the list to include either ''appropriate persons'' or ''accredited investor'' as set forth in Rule 501 (Regulation D) of the Securities Act of 1993.[33] Four commenters stated that domestic and foreign corporations should be eligible customers.[34] Commenters also suggested including large, sophisticated corporate investors[35] and individuals or entities with assets in excess of $100 million.[36] One commenter suggested including a CTA acting for its proprietary account.[37] Finally, one exchange recommended expanding the list to include ''appropriate persons'' and all those who qualify for exemptive relief under Commission Regulation 4.7.[38]

(b). 1.35(a–1)(6)(iii)(B)—Proprietary Interest

Many commenters believed the provision limiting proprietary interests was overly restrictive. Commenters stated that it would inhibit access to U.S. markets[39] and would result in unfair customer treatment.[40] Two commenters pointed out that the provision would exclude certain publicly owned organizations from becoming eligible customers.[41] Most commenters stated that the limit on proprietary interest should be less than 10 percent, which is consistent with the definition of proprietary interest contained in Commission Regulation 1.3(y).[42] One commenter, however, stated that a de minimis provision exempting interests of less than one percent in participating accounts would be adequate.[43]

3. Reproposed Regulation 1.35(a–1)(5)(iii)

(a). 1.35(a–1)(5)(iii)(A)—Types of Customers

After consideration of the comments, the Commission believes that it is appropriate to expand the list of eligible customers. As reproposed, the group of eligible customers would be substantially similar to those entities defined as ''eligible participants'' for purposes of Part 36—Exemption of Section 4(c) Contract Market Transactions, of the Commission's regulations, except that sole proprietorships, floor brokers, floor traders, and natural persons, as well as self-directed employee benefit plans, would not be included as eligible customers.

As the Commission stated in promulgating the final rules for Part 36, the list of ''eligible participants'' was modeled on the list of ''appropriate persons'' set forth in Section 4(c)(3)(A) through (J) of the Act and on the definition of ''eligible swap participant'' under Part 35 of the Commission's regulations.[44] Having previously considered this group of entities and

[29] *See, e.g.*, In the Matter of GNP Commodities, Inc., et al., [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,360 (CFTC August 11, 1992); In the Matter of Lincolnwood Commodities, Inc., of California, *et al.*, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,986 (CFTC January 31, 1984); *Parciasepe* v. *Shearson Hayden Stone, Inc., et al.*, [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,461 (CFTC August 18, 1982); *Wilke, et al.*, v. *Winchester-Hardin Oppenheimer Trading Co., et al.*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,605 (CFTC December 29, 1977).

[30] The CME's proposed rule amendment would have prohibited the individual or firm directing the allocation of the order from having a proprietary interest in any account that received any part of such order. Commission Regulation 1.3(y) defines a proprietary account to include the ownership of ten percent or more of a futures or option trading account. Therefore, the proposed CME amendment would have permitted the person or firm directing the allocation to have an interest of less than ten percent of one or more of the accounts receiving part of the allocated order.

[31] Carr, Pacific, FIA, and CME. CME also proposed expanding the list to include foreign corporations.

[32] Dean Witter, First Boston, Lind-Waldock, and Morgan Stanley. Goldman Sachs suggested that the eligible customer restriction be eliminated because it would require account managers to treat their customers in a disparate manner and to disadvantage those customers who were not permitted to be included in a bunched order. In the alternative, Goldman Sachs recommended that the list be expanded to include eligible swap participants.

[33] Bear Stearns.

[34] Bear Stearns, Dean Witter, Lind-Waldock, and TSA.

[35] Flaherty.

[36] N.Y. Bar.

[37] First Boston. The N.Y. Bar suggested including FCMs, IBs, CTAs, and CPOs trading for their own accounts as eligible customers.

[38] CBT.

[39] Credit Agricole and Refco.

[40] Bear Stearns asserted that it would be unfair to exclude otherwise eligible types of funds because the account manager was required to have a small interest in a partnership or contributed seed money at the start up of a mutual fund or was paid a management fee by the fund.

[41] Flaherty stated that a registered investment company would not be an eligible customer, for instance, if the investment adviser made a seed money investment in the initial shares issued by the fund or if officers of the account manager served on the Board of Directors of the fund and, held shares of the fund. In addition, it would be impossible for the account manager or the FCM allocating the order to know with certainty that no relative of any of the listed persons held any shares in a publicly owned corporation for whose account the transaction was executed.

The ICI commented that the practical effect of the provision would be to disqualify most, if not all, investment advisers to investment companies from relying on the proposal. Additionally, it would be almost impossible for such investment advisers to assure compliance on an ongoing basis and it would impede the investment adviser's ability to act in the best interests of investment companies that were clients.

[42] Dean Witter, First Boston, Lind-Waldock, Pacific, FIA, N.Y. Bar, CBT, and CME. CME also suggested removing from the list of entities subject to the no interest provision ''[a]ny business affiliate that, directly or indirectly, controls, is controlled by, or is under common control with, the account manager or the futures commission merchant allocating the order.'' The CME posited that removing this provision would prevent managed accounts from being unnecessarily excluded from eligibility.

[43] Flaherty stated that while an FCM who is also an underwriter and a market maker for securities might want a higher percentage interest, permitting an owner of up to 10 percent of the interest in the account manager to hold an unlimited interest in a participating account would seem to invite possible abuse.

[44] 60 FR 51328 (October 2, 1995).

determined that they are eligible to participate both in exempt transactions and in swaps, the Commission believes that they are sufficiently sophisticated to monitor the results of post-trade allocations in their accounts. The Commission is incorporating into this paragraph the requirement that these entities, in order to be considered eligible customers, must have consented in writing that eligible orders may be placed, executed, and allocated for their accounts. The issue of consent is discussed below.

The Commission does not believe, however, that accounts owned by sole proprietorships, floor brokers, floor traders, natural persons, or self-directed employee benefit plans should be included as eligible customers. The Commission believes that the eligible customers should be institutional or other comparatively large entities whose accounts are subject to other regulatory or management regimes and who may participate in multi-market investment strategies. Although the Commission recognizes that natural persons meeting certain asset or net worth standards may be sufficiently sophisticated to participate, the Commission believes that preferential allocations would be more likely to occur if accounts owned by individuals were included in eligible orders.[45] The Commission requests comments regarding the proposed exclusion of natural persons as eligible customers.

(b). 1.35(a–1)(5)(iii)(B)—Proprietary Interest

After consideration of the comments, the Commission has determined to modify the proposed provisions regarding ownership interest in any account that receives any part of an eligible order or in any related securities account. The Commission is deleting from the reproposal the interest requirement as it applies to any related securities account. As reproposed, the regulation requires that there be a portfolio containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from regulation under the Act rather than a related securities account.

The Commission also is proposing to increase the acceptable level of ownership interest in any account that receives any part of an eligible order from no interest to an interest of less than ten percent, which is similar to the Commission's definition of proprietary interest as set forth in Regulation 1.3(y). The Commission is aware that the account manager may have ''seed'' money invested in the eligible account or, in fact, may invest in the account in order to attract other investors. In any event, the Commission believes that application of the less than ten percent restriction to the listed participants is an appropriate provision that would neither unduly restrict the placement of eligible orders nor increase the incentive to misallocate.

Finally, the Commission is proposing to delete the following as one of the entities subject to the interest restriction: an employee benefit plan of the account manager, the futures commission merchant allocating the order, or an affiliate. These plans are subject to strict ERISA regulations.

D. Account Certification

1. Proposed Regulation 1.35(a–1)(6)(iv)

Proposed Regulation 1.35(a–1)(6)(iv)(A) required that the account manager, before placing the initial order pursuant to this paragraph, certify the following, in writing, to the FCM allocating the order:

(i) The account manager had no interest in any account to which any part of the order may be allocated or in any related securities account.

(ii) The account was owned by an eligible customer.

(iii) The customer had consented in writing that orders may be executed and allocated in accordance with this regulation.

(iv) Orders for such account would be intermarket orders for which it would be impracticable to pre-file a predetermined allocation formula.

(v) Records required by paragraph (a–1)(6)(vi)(A) of the regulation would be made available to the Commission or Department of Justice upon request of any representative thereof.

In addition, proposed Regulation 1.35(a–1)(6)(iv)(B) required that the account manager, before placing the initial order pursuant to this paragraph, must provide the FCM allocating the order with a list of eligible accounts and their related securities accounts.

The Commission believed that these safeguards addressed several purposes of the proposed regulation and were intended to reduce the likelihood of misallocation. In order to encourage compliance with the proposal's requirements, the account manager placing intermarket orders would have been required to certify to the FCM allocating the order that he or she had no interest in any account to which any part of an intermarket order may have been allocated or in any related securities account. The account manager also would have been required to certify that the accounts to which intermarket orders would be allocated were owned by eligible customers. These one-time certification requirements would have helped to assure that personal or proprietary accounts were not included among the accounts to which intermarket order allocations were made.

With regard to customer consent, the Commission believed that notification was insufficient and that these institutional accounts should have the opportunity to consent affirmatively to participate in the intermarket allocation procedure.[46] The Commission believed that customer consent was an important tool in assuring adequate customer oversight of trading activity. Drawing upon comments that the account controller had the relevant relationship with the customer for purposes of obtaining consent, the Commission believed that the account manager would be the appropriate party to obtain that consent and so certify to the FCM so that the FCM could assure that intermarket allocations were made only to the eligible accounts. The consent could have been contained in account opening documents or obtained separately.

The proposed amendment was designed for the benefit of institutional accounts that were being traded pursuant to a strategy that involved related positions in both the futures and securities markets. The Commission believed that, whenever possible, the account manager should place and allocate the order by use of a predetermined allocation formula. The intermarket order allocation procedure was available where use of the predetermined allocation formula would not permit the account manager to attain equitable results. Thus, the Commission believed that a one-time certification that orders placed would be intermarket orders for which it would be impracticable to pre-file a predetermined allocation formula was appropriate.

The use of the post-trade order allocation procedure would have been limited to eligible accounts participating in regulated multi-market trading and both the futures and the related securities accounts would have to have

[45] A review of preferential allocation cases reveals that misallocations, when they occur, often are made to personal or proprietary accounts or to accounts owned by family members.

[46] The CME's proposed amendment to Rule 536 would have required that the FCM notify the identified eligible account owners that orders for those accounts could be bunched and entered without individual customer account identification and allocated at the end of the day.

been identified to the FCM allocating the order.[47] Additionally, the proposed regulation contained a requirement that the account manager agree that the records discussed in paragraph (vi)(A) of the proposed regulation would be made available to specified government agencies upon request.[48]

2. Comments Received

Two commenters stated that all five certifications were unnecessary and duplicative.[49] Numerous commenters opposed the requirement that the account manager certify that the customer had consented in writing that intermarket orders may be executed and allocated, stating that notification would be sufficient.[50] Commenters also stated that the requirement to obtain consent would deter account managers from utilizing the markets in this manner [51] and that it is inconsistent with practices in other markets [52] and with the ability of account managers to monitor client activity and to perform in the client's best interest.[53] One commenter agreed that customer consent should be in writing.[54] Several commenters opposed the requirement that the account manager certify that the orders would be intermarket orders [55] for which it would be impracticable to pre-file a predetermined allocation formula.[56]

Numerous commenters stated that the requirement that the account manager must provide the FCM with a list of eligible accounts and their related securities accounts should be eliminated. Commenters felt that this requirement would result in the disclosure of proprietary information,[57] would serve no useful purpose,[58] and would be overly burdensome because of the potentially large number of accounts at issue.[59]

3. Reproposed Regulation 1.35(a–1)(5)(iv)

After consideration of the comments received, the Commission has determined to reduce the required account manager certifications to one: any account manager placing eligible orders must certify, in writing, to each FCM executing and/or allocating any part of an eligible order, that he or she is aware of the provisions of this paragraph and is, and will remain, in compliance with the requirements therein. The Commission intends that this certification would encourage compliance by account managers and need be made only once to each applicable FCM, not on an order-by-order basis.[60]

The Commission believes that the responsibility for compliance with the eligible order provisions should generally fall on the account manager and his or her principal, if applicable.[61] The Commission has become convinced that little regulatory benefit or additional customer protection would accrue from requiring the FCM to obtain other account manager certifications. The extent of the account manager's compliance with these requirements would be determined during audits and on a for-cause basis.

On the topic of customer consent, the Commission continues to believe that notification alone is insufficient and that these eligible accounts should have to consent affirmatively prior to participating in the post-trade allocation of eligible orders. This is particularly true in the context of the reproposal, which has streamlined and deleted many previously proposed requirements. As the Commission stated in the proposed rule, the account manager is the appropriate party to obtain that consent, either in account opening documents or separately.[62]

The Commission has eliminated the requirement that the account manager must provide the FCM allocating the order with a list of related securities accounts. However, the reproposal continues to require that the account manager must provide a list of eligible futures accounts to the FCM allocating the order. This requirement should enable the FCM to assure that allocations are made only to eligible accounts.

E. Allocation

1. Proposed Regulation 1.35(a–1)(6)(v)

Proposed Regulation 1.35(a–1)(6)(v) required the following:

(1) Intermarket orders allocated pursuant to the regulation must be designated as such on the order at the time of entry.

(2) Intermarket orders must be identified on contract market trade registers and other computerized trade practice surveillance records.

(3) The account manager and the FCM allocating the order must allocate fills from intermarket orders to eligible participating customer accounts prior to the deadline for final submission of trade data to clearing on the day the intermarket order is executed.

(4) The FCM allocating the order must assure that all intermarket orders are allocated to eligible customer accounts.

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[47] The identification of both the futures and securities accounts was believed to be necessary to assure that (1) use of the allocation procedure was restricted to eligible accounts participating in multi-market trading and (2) the related securities account was known in the event it became necessary to review the trading in both markets for possible violative activity.

[48] The Commission, although not the primary regulator of the account manager, recognized that it might require records of transactions in other markets which would not otherwise have been readily available in order to review allegations of preferential allocation.

[49] CBT and CME. In addition, Morgan Stanley commented that, since it was the account manager's obligation to obtain the written consent, it seemed redundant to require that the FCM obtain such a certification.

[50] Dean Witter, Lind-Waldock, Pacific, PaineWebber, TSA, and FIA. Bear Stearns stated that the proposal should be clarified so that customer consent could be given when the customer signs the investment manager contract with the account manager and further stated that, for those customers with existing contracts, notification with the right of the customer to affirmatively opt out should be sufficient.

[51] Credit Agricole and PaineWebber.

[52] Credit Agricole, Pacific, and CME.

[53] Leland. Carr asserted that requiring the expert (account manager) to get written permission from the account owner to manage the assets in the best possible manner seemed a bit pointless.

[54] Flaherty.

[55] Leland, Lind-Waldock, TSA, and ICI. Carr commented that the requirement to identify the orders as part of an intermarket strategy undermined the proprietary nature and confidentiality of a trader's strategy. Morgan Stanley stated that the FCM would not be in a position to determine whether orders were in fact intermarket orders.

[56] ICI expressed concern regarding the standards by which impracticability would be judged. It recommended elimination of this component of the certification requirement.

[57] Dean Witter, Lind-Waldock, TSA, FIA, ICI, CBT, and CME. Bear Sterns also stated that providing such information to the FCM might be a breach of the account manager's fiduciary duty. Pacific stated that it would breach customer confidence to share such information with FCMs. Goldman Sachs stated that, for reasons of confidentiality, account managers may not be willing to provide FCMs with the identification of securities accounts under their management. NFA commented that the burden imposed and the privacy concerns which may be raised outweighed the minimal benefit to be derived from requiring the account manager to provide the FCM with a list of related securities accounts.

[58] Credit Agricole, Dean Witter, Refco, and FIA. Goldman Sachs also stated that, even with the information, the FCM would be unable to make any meaningful assessment regarding the nature of the order. In addition, in some instances, such as overlay programs, the account manager might not have the ability to provide information because he or she may not control the accounts.

[59] Bear Sterns, Merrill Lynch, Pacific, PaineWebber, FIA, CBT, and CME.

[60] Where the account manager places orders directly with a floor broker rather than an executing FCM, the certification need only be filed with each FCM allocating any part of an eligible order and not with the floor broker.

[61] Pursuant to Regulation 166.3, an account manager's employer, if registered with the Commission, has a duty diligently to supervise his or her activities. Regardless of registration status, a principal could be held liable for an account manager's wrongdoing under Section 2(a)(1)(A) of the Act.

[62] Where applicable, the account manager's employing firm should be aware that an account manager has the client's consent to place eligible orders.

The Commission believed that these allocation requirements, in combination with the requirement that the account manager, the FCM, and their affiliates and related parties not have any interest in any participating account or related securities account, would limit the potential for self-dealing by the account manager and the FCM. It would also provide an audit trail reflecting the ultimate disposition of the order. Further, these requirements would be consistent with good business practice.

When the order was placed, it would have to be identified as an intermarket order. The exchange would have to assure that the order was specially identified on the trade register and other computerized trade practice surveillance records. The account manager would have to provide allocation instructions for the entire order to the FCM prior to the deadline for final submission of trade data to clearing on the day the intermarket order was executed. Finally, the FCM would have to assure that the entire order was allocated to eligible customer accounts previously identified by the account manager.

2. Comments Received

The CME and CBT stated that the proposed requirement that intermarket orders must be so designated at the time of entry was inappropriate because it could reveal proprietary information and would impose a costly regulatory burden.[63] One commenter opposed the proposed requirement that these orders be identified on contract market trade registers and other records.[64] Three commenters, while agreeing that allocations should occur by the end of the day, stated that the exchange, and not the Commission, should decide the trade submission deadlines.[65] Finally, several commenters expressed concern about holding the FCM responsible for assuring that orders are allocated to eligible customer accounts.[66]

3. Reproposed Regulation 1.35(a-1)(5)(v)

After consideration of the comments received, the Commission has determined to modify certain of the allocation requirements and to add one requirement. In addition, the Commission has reorganized this paragraph to include some of the originally proposed allocation requirements as recordkeeping requirements.

The requirement that eligible orders must be so identified on the order at time of entry has been redesignated as a recordkeeping requirement. The Commission currently is proposing that each eligible order, as well as the account manager placing that order, be identified on the office order ticket, if applicable, and on the floor order ticket at the time of order placement. The Commission believes that the maintenance of a complete audit trail requires that eligible orders be properly identified from order placement through order allocation. The office and/or floor order ticket is the first step in this process.

Identification of this kind would not appear to reveal any proprietary or trading strategy information. The executing and/or allocating FCM would not need to know the specifics of the other instruments in the portfolio. Moreover, the only accounts identified to an FCM would be those to which that FCM would be allocating fills either directly or through give-ups. Rather than identifying a trading strategy, the designator would only identify an eligible order that would be allocated pursuant to these procedures. The requirement that each transaction resulting from the execution of an eligible order be identified on contract market trade registers and other computerized trade practice surveillance records remains substantially unchanged. It is simply redesignated as a recordkeeping requirement.

The reproposal would require that allocation of an eligible order must take place prior to the end of the day the order is executed, as specified by exchange rules for this purpose. Because this paragraph would also require that the account manager and the FCM allocating the order allocate fills to eligible participating customer accounts, the Commission is deleting as redundant the proposed separate paragraph that required that the FCM do so.[67]

The Commission agrees that the account manager has the responsibility for employing a system that results in fair, equitable, and non-preferential allocations. As noted below, the account manager must, upon request, provide to the Commission or the Department of Justice records that, among other things, identify the trading strategy and demonstrate the fairness of the allocations. The FCM's allocation responsibilities generally should be limited to complying with instructions from the account manager. However, as previously noted, the account manager is required to provide the FCM allocating the order with a list of eligible accounts. If the FCM were directed to allocate eligible orders to accounts not included on the list, or if the FCM should become aware of what appear to be preferential allocations, the FCM is required to make a reasonable inquiry and, if appropriate, to refer the matter to a regulatory authority (i.e., the Commission, the NFA, or its designated self regulatory organization). In addition, the FCM must act consistently with its obligations under Regulation 166.3 diligently to supervise the handling of its customer accounts.

Finally, the Commission is proposing to add a new paragraph to the allocation requirements. Specifically, the Commission is proposing a requirement that allocations made pursuant to these procedures must be fair and non-preferential, taking into account the effect on each relevant portfolio in the bunched order.

F. Recordkeeping

1. Proposed Regulation 1.35(a-1)(6)(vi)

Proposed Regulation 1.35(a-1)(6)(vi) required the following:

(1) Each account manager must make available, upon request of the Commission or the United States Department of Justice, the records referred to in paragraph (iv) of the regulation and other records, including records of securities transactions, reflecting order placement and allocation to the participating customer accounts. These records must demonstrate the relationship between the futures and the other transactions, the allocations made, the basis for allocation, and the nature of the

[63] CBT also stated that no such requirement existed for securities transactions and that the requirement ignored the fact that the account manager was already under an existing regulatory scheme that imposed fiduciary duties. As previously noted, Carr commented that requiring that such orders be designated as part of an intermarket strategy undermines the proprietary nature and confidentiality of a trader's strategy.

[64] CBT stated that the requirement would lead to a costly regulatory burden and should be eliminated.

[65] FIA, CBT, and CME.

[66] Merrill Lynch. First Boston stated that imposing this requirement on the FCM failed to recognize that the FCM acts for the account manager and that it should be the account manager's responsibility to document and to use a fair and equitable allocation system. CBT stated that the FCM's allocation responsibilities should be limited to making allocations in accordance with the account manager's instructions and in a timely manner. Commenting on the proposed regulation generally, FIA stated that its focus should be to enable account managers the maximum latitude in placing trades subject to a fair, equitable and demonstrable allocation scheme, while recognizing that FCMs have no practical ability to supervise independent account controllers.

[67] When a trade is allocated to a specific eligible account, it belongs to that account and cannot be reallocated to any other eligible account. *In re Collins*, CFTC Docket No. 94–13, Slip op. at 11–15 (CFTC Dec. 10, 1997).

intermarket strategy. They should also permit reviewers to compare results obtained for different customers.

(2) Each account manager shall make available for review, upon request of an eligible customer, documentation sufficient for the customer to compare its results with those of other customers. The other accounts for which intermarket orders are entered may be designated by symbols so that the identity of account holders is not disclosed.

(3) Upon request, each FCM allocating intermarket orders at the direction of an account manager will exercise its best efforts to obtain from the account manager and to provide to the Commission or the Department of Justice records reflecting the related transactions in the securities accounts.

In order that any allegation of misallocation or unfavorable treatment could be properly investigated, the Commission believed that the account manager should have been required to retain and to make available for review, upon request of the Commission or the Department of Justice, the investment management rationale for intermarket orders and allocations. In order to enhance customer protection and to simplify customer account review, the Commission believed that the account manager should have been required to make available for review, upon request of a customer, documentation sufficient for that customer to compare its results with those of other customers. The identity of other account holders for which intermarket orders were entered need not, however, have been disclosed to another customer.

Finally, the Commission believed that the FCM allocating intermarket orders at the direction of an account manager should have been required, upon request of certain government agencies, to exercise its best efforts to obtain records reflecting the related transactions in the securities accounts. The determination that preferential allocation occurred could be accomplished only when all related transactions were examined and allocations in all markets were compared.[68]

2. Comments Received

Numerous commenters described the proposed recordkeeping requirements as burdensome,[69] unnecessary,[70] or unreasonable.[71] Commenters addressing the proposed requirement to make documentation available to the customer to allow that customer to compare its results with those of other customers focussed both on the possible disclosure of proprietary or confidential information [72] and on the limited value of such information to the customer.[73] All commenters who addressed the issue opposed the proposed requirement that the FCM exercise its best efforts to obtain records reflecting securities transactions from the account manager.[74]

3. Reproposed Regulation 1.35 (a–1)(5)(vi)

After consideration of the comments, the Commission has determined to modify the recordkeeping requirements originally proposed. As noted above, two items formerly identified as allocation requirements have been redesignated as recordkeeping requirements. Additionally, the Commission is proposing to add the requirement that the FCM carrying an eligible account to which an eligible order has been allocated must identify each trade resulting from the execution of an eligible order on confirmation statements provided to the affected account owner and/or trustee. The Commission believes that the account owner should be informed of all aspects of transactions executed for his or her account in order to make informed decisions about the continued use of the eligible order procedures. The Commission is deleting the requirement that, upon request, the FCM allocating eligible orders exercise its best efforts to obtain documentation from the account manager. This requirement is unnecessary since the account manager already is required to provide such documentation directly to the Commission or the Department of Justice if requested.

The Commission proposes to streamline the documentation that would be required to be made available to the Commission or the Department of Justice by the account manager. In addition to documentation reflecting customer consent to the placement and allocation of eligible orders, the account manager would be required to make available records reflecting (i) futures and option transactions,[75] (ii) other transactions executed pursuant to the portfolio management strategy, and (iii) any other records that identify the strategy and relate to, or reflect upon, the fairness of the allocations. Thus, the reproposal does not identify with the same specificity the records required to be provided. Nonetheless, the account manager would have the responsibility to demonstrate, when records are requested or during regulatory authority audits, that allocations were made fairly.

The Commission continues to believe that eligible customers should be able to compare results to other customers with similar accounts and investment strategies. Thus, the reproposal would require that the account manager make available, upon request of an eligible customer, data sufficient for that customer to compare its results with those of other relevant customers. In addition, the account manager must indicate in which of the other relevant customers it or the FCM has an interest. The Commission believes that describing the requirement in these terms permits the use of established methods used by sophisticated institutional investors in securities to measure and to compare performance. Data enabling the customer to perform such a comparison may be prepared so

[68] Based upon discussions with participants in the industry, the Commission believed that the documents, worksheets and computer programs that determined the allocation formula already were created and retained by account managers responsible for allocation decisions.

[69] Credit Agricole, Goldman Sachs, Pacific, Refco, Saul Stone, and NFA.

[70] Goldman Sachs, Morgan Stanley, TSA, MFA, and NFA. CBT commented that the value of the recordkeeping requirements appeared to be minimal.

[71] Dean Witter and Lind-Waldock. CME commented that it was overreaching for the Commission to impose recordkeeping requirements on investment advisers that are otherwise regulated.

[72] Flaherty, First Boston, Carr, N.Y. Bar, and CBT. Carr commented that it doubted customers would authorize their account manager to release details of their trading activity in order for another managed account to verify the fairness of its allocations. The N.Y. Bar stated that it believed that many customers would object to such disclosure, even in the absence of the customer's identity. According to the N.Y. Bar, activity in a particular account could provide information which would serve to identify a particular customer, and even if the identity were shielded, customers and advisers may object to the release of information which would reveal market strategies.

[73] Pacific, CBT, and CME. Flaherty commented that the proposed requirement should be modified to data, rather than documentation, sufficient for the customer to compare its overall results with those of other customers. Flaherty also suggested that eligible customers be required to acknowledge in writing that they have been informed of their right to request information on comparative results.

[74] First Boston, Goldman Sachs, Carr, Merrill Lynch, Morgan Stanley, Pacific, FIA, NFA, N.Y. Bar, CBT, and CME. According to Flaherty, such a requirement would give FCMs substantial leverage for obtaining proprietary data of the account manager and its clients, would result in account managers switching to FCMs without securities operations, and would be unnecessary because the same data could be obtained directly from the account manager by the Commission or the Department of Justice.

[75] The account manager must create and retain a record reflecting the participation of all accounts in each eligible order, including the allocation of all fills.

as not to disclose the identity of individual account holders.

G. Contract Market Rule Enforcement Programs

1. Proposed Regulation 1.35(a–1)(6)(vii)

Proposed Regulation 1.35(a–1)(6)(vii) required that, as part of its rule enforcement program, each contract market that adopted rules allowing the placement of intermarket orders would have to assure that all fills resulting from these orders were identified on contract market trade registers and other computerized trade practice surveillance records. Each contract market, or the designated self-regulatory organization (''DSRO'') of a member firm, would have to adopt an audit procedure to determine compliance with the following components of the regulation: recordkeeping requirements in paragraph (iv), account certification in paragraph (v), and allocation requirements in paragraph (vi).

The Commission believed that this surveillance was necessary to deter possible unlawful activity and to ensure that an adequate audit trail existed for intermarket transactions. As part of its routine oversight of member firms, the exchange would have been required to assure that intermarket orders were correctly identified on exchange trade registers. The exchange or the DSRO would have been required to audit member firms to assure that (i) the order was allocated prior to the deadline for final submission of trade data to clearing on the day the intermarket order was executed; (ii) the order was allocated only to eligible participating institutional customer accounts whose owners had consented to the allocation; and (iii) the FCM received and retained required documents from the account managers.

2. Comments Received

CME and CBT commented adversely on the audit procedures proposed to be imposed on exchanges. Both exchanges asserted that costs would be high and the benefit to market users would be minimal.

3. Reproposed Regulation 1.35(a–1)(5)(vii)

The requirement that the contract market assure that all fills resulting from eligible orders are identified on trade registers and other computerized trade practice surveillance records is being retained as a proposed recordkeeping requirement. Therefore, it is being deleted from this paragraph as redundant. The remainder of this paragraph is substantially consistent with the paragraph originally proposed. The contract market must adopt audit procedures to determine compliance with the identified provisions of the reproposed regulation. Specifically, these provisions would include (i) the certification requirements; (ii) the requirement that orders must be allocated to eligible accounts by the end of the day; and (iii) the requirement that eligible orders must be so identified on trade registers, other surveillance records, order tickets, and customer confirmation statements. The Commission continues to believe that these requirements are necessary to deter possible unlawful activity and to ensure that an adequate audit trail is created for eligible transactions.

III. Conclusion

The Commission is proposing, subject to certain core regulatory protections, to permit a limited number of regulated account managers to place orders for a defined group of eligible customers without providing specific customer account identifiers at the time of order placement.[76] The Commission previously has identified all of these customers as eligible to enter swap agreements or execute Section 4(c) contract market transactions. The account managers would be required to allocate the order at the end of the day.[77] As discussed below, in addition to the customer safeguards being reproposed, significant existing audit trail and recordkeeping requirements would remain applicable.

Under the reproposal, the customer must consent in advance, in writing, that orders may be placed, executed, and allocated as eligible orders. Allocations of eligible orders must be fair and non-preferential, taking into account the effect on the relevant portfolio of each customer in the bunched order. The account managers would be required to maintain records that would, among other things, reflect the portfolio management strategy and demonstrate the fairness of the allocations. These records would be available, upon request, to the Commission or the Department of Justice. The account manager would be required to provide the customer, upon request, with data sufficient to compare results with those of other relevant customers.

The reproposal prohibits an account manager and his or her partners, officers, employees, and related parties and affiliates from having an interest of ten percent or more in any account to which he or she is allocating orders. This prohibition should diminish the incentive to make preferential allocations for personal gain. Because, in some instances, the FCM may be able to influence the fairness of the allocations, the same restriction would apply to the FCM allocating the order and its partners, officers, employees, and related parties and affiliates. In addition, the reproposed recordkeeping requirements would deter and facilitate detection of misallocations which may indirectly benefit the account manager.[78] The reproposal would also require that an exchange that permits the placement, execution, and allocation of eligible orders must adopt, as part of its rule enforcement program, audit procedures to determine compliance with relevant provisions.

Under the reproposal, an eligible order must be identified at time of placement on the floor order ticket and, if appropriate, on the office order ticket. The identity of the account manager must also be included on the order tickets. All trades resulting from the execution of an eligible order must be identified on exchange trade registers and computerized trade practice

[76] The Commission believes that these core regulatory protections adequately address the issues raised by those who submitted comments opposed to either the proposed amendment to CME Rule 536 or the Commission's proposed amendment to Regulation 1.35.

The Commission appreciates the views of the law enforcement authorities which commented on the previous proposed regulation and shares their desire that Commission-regulated futures and option markets not be used as a vehicle to commit serious financial crimes. It is with those concerns in mind that the Commission has crafted the protections incorporated into the reproposed regulation. These protections include specific eligibility requirements for account managers and customers and recordkeeping provisions intended to document fair and non-preferential treatment of customers. Coupled with the strong antifraud provisions of the Act and the Commission's rigorous supervision rule, these protections should insure that the proposed allocation procedure will not unduly threaten customer protection or market integrity. Rather, the rule should enable portfolio managers acting in a fiduciary capacity to handle customer interests across markets, without undermining any legitimate customer or law enforcement interests.

[77] End-of-day or post-trade allocation of bunched or block orders is permissible on foreign futures exchanges and in the cash and securities markets. The New York Stock Exchange (''NYSE''), for example, has permitted end-of-day allocation of securities block orders since October 1983. Interpretation 88–3 of NYSE Rule 410(a)(3).

[78] As a matter of state law and federal securities, commodities, or banking law, eligible account managers would have fiduciary responsibility for their investment management activities. Additionally, account managers would be subject to Section 4b, the general antifraud provision of the Act. Account managers who are also acting as commodity trading advisors or commodity pool operators, irrespective of registration status, would also be subject to Section 4o. The securities anti-fraud rules may also apply.

surveillance records. Finally, these trades must also be identified on confirmation statements provided to the customer accounts.

Those requirements, in conjunction with existing audit trail requirements, should enable the Commission and self-regulatory organizations to track any eligible order from time of placement to allocation of fills. At time of placement, the order would be identified on order tickets. These order tickets would be timestamped upon receipt of the order. The order executions would be identified on exchange trade registers by, among other things, both time and price. The order tickets would be timestamped again to identify time of report of execution. The trading cards and/or order tickets would reflect the terms of the order executions. The subsequent allocation of the fills would be maintained on FCM and exchange records. Where it is the exchange's practice to do so, the allocation of the fills to specific customer accounts would be reflected on the exchange's final trade register. The order would be identified on confirmation statements sent to the owner of the account. Thus, an auditor could determine, among other things, the size and time of initial order placement, the times and prices of executions, the identities of accounts to which the fills were allocated, and the prices and quantities of the fills allocated thereto.

The Commission encourages commenters to address the appropriateness of the balance being struck by this reproposal between protection of sophisticated market participants and regulatory reform. Additionally, the Commission encourages commenters to address the proposition that the relief being proposed herein, through an amendment to the Commission's recordkeeping requirements, might be achievable to some extent through enhanced customer disclosure and reliance on the account managers' fiduciary responsibility.

IV. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets,[79] futures commission merchants,[80] registered commodity pool operators,[81] and large traders [82] are not ''small entities'' for purposes of the Regulatory Flexibility Act. The Commission has previously determined to evaluate within the context of a particular rule proposal whether all or some commodity trading advisors should be considered ''small entities'' for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on commodity trading advisors of any such rule at that time.[83] Commodity trading advisors who would place eligible orders pursuant to these procedures would do so for multiple clients and would be participating as investment managers in more than one financial market. Accordingly, the Commission does not believe that commodity trading advisers should be considered ''small entities'' for purposes of this regulation.

Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

Proposed Regulation 1.35(a–1)(5) generally would apply to large users of the market. It would provide relief from individual account identification requirements, thereby providing those small entities who elect to use the relief with a less burdensome method for satisfying Commission Regulation 1.35 requirements.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection (3038–0022), including this proposed rule, is as follows:

Average burden hours per response: 3547.01.

Number of Respondents: 11,011.00.

Frequency of Response: On Occasion.

The burden associated with this specific proposed rule is as follows:

Average burden hours per response: 0.75.

Number of Respondents: 400.00.

Frequency of Response: On Occasion.

Persons wishing to comment on the information which would be required by this proposed rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Commodity options, Consumer protection, Contract markets, Customers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements, Rule enforcement programs.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 5, 5a, 5b, 6(a), 6b, 8a(7), 8a(9) and 8c, 7 U.S.C. 7, 7a, 7b, 8(a), 8b, 12a(7), 12a(9), and 12c, the Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.35 is proposed to be amended by revising paragraphs (a–1)(1), (2)(i), and (4) and by adding paragraph (a–1)(5) to read as follows:

[79] 47 FR 18618, 18619 (April 30, 1982).

[80] *Id.*

[81] *Id.* at 18620.

[82] *Id.*

[83] *Id.*

§ 1.35 Records of Cash Commodity, Futures, and Option Transactions

* * * * *

(a–1) * * *

(1) Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of the order in nonerasable ink, including the account identification, except as provided in paragraph (a–1)(5) of this section or appendix C to this part, and order number and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received.

* * * * *

(4) Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of the contract market received in accordance with paragraphs (a–1)(2)(i) or (a–1)(2)(ii)(A) of this section, shall record on a written record of the order, including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, by timestamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on such order tickets must be written in nonerasable ink.

(5) *Bunched orders for eligible accounts.* A specific customer's account identifier need not be recorded at the time a bunched order is placed on a contract market or upon report of execution, provided that the following requirements are met and that the order is handled in accordance with contract market rules that have been submitted to the Commission and approved or permitted into effect pursuant to Section 5a(a)(12)(A) of the Act and § 1.41. The bunched order must be allocated to the eligible accounts prior to the end of the day on which the order is executed.

(i) Eligible orders. Bunched orders placed, executed, and allocated pursuant to this paragraph (a-1)(5) must be placed by an eligible account manager on behalf of consenting eligible customers as part of its management of a portfolio also containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Act.

(ii) Eligible account managers. The person placing and/or directing the allocation of an eligible order and its principal, if any, (''account manager'') must be one of the following which has been granted investment discretion with regard to eligible customer accounts:

(A) A commodity trading advisor registered with the Commission pursuant to the Act;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940; or

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation.

(iii)Eligible customers.

(A) Eligible orders may be allocated to accounts owned by the following entities which have consented in advance, in writing, to the account manager that orders may be placed, executed, and allocated in accordance with this paragraph:

(*1*) A bank or trust company;

(*2*) A savings association or credit union;

(*3*) An insurance company;

(*4*) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*) or an investment company performing a similar role or function subject to foreign regulation, provided that the investment company or foreign person is not formed solely for the purpose of constituting an eligible customer and has total assets exceeding $5,000,000;

(*5*) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject to foreign regulation, provided that the commodity pool or foreign person is not formed solely for the purpose of constituting an eligible customer and has total assets exceeding $5,000,000;

(*6*) A corporation, partnership, proprietorship (but not a sole proprietorship), organization, trust, or other entity comprised of more than one person, provided that the entity was not formed solely for the purpose of constituting an eligible customer and has either a net worth exceeding $1,000,000 or total assets exceeding $10,000,000;

(*7*) A corporate qualified pension, profit sharing, or stock bonus plan subject to Title 1 of the Employee Retirement Income Security Act of 1974 (''ERISA''), or a foreign person performing a similar role or function subject to foreign regulation, with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), or a commodity trading advisor subject to regulation under the Act, or any plan defined as a governmental plan in Section 3(32) of Title 1 of ERISA, but not including a self-directed plan;

(*8*) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(*9*) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) or a foreign person performing a similar role or function subject to foreign regulation, acting on its own behalf; provided, however, that the broker-dealer may not be a natural person or sole proprietorship; or

(*10*) A futures commission merchant subject to regulation under the Act or a foreign person performing a similar role or function subject to foreign regulation, acting on its own behalf; provided, however, that the futures commission merchant may not be a natural person or sole proprietorship.

(B) The following persons, or any combination thereof, may not have an interest of ten percent or greater in any account that receives any part of an eligible order:

(*1*) The account manager;

(*2*) The futures commission merchant allocating the order;

(*3*) Any general partner, officer, director, or owner of ten percent or more of the equity interest in the account manager or the futures commission merchant allocating the order;

(*4*) Any employee, associated person, or limited partner of the account manager or the futures commission merchant allocating the order who affects or supervises the handling of the order;

(*5*) Any business affiliate that, directly or indirectly, controls, is controlled by, or is under common control with, the account manager or the futures commission merchant allocating the order; or

(*6*) Any spouse, parent, sibling, or child of the foregoing persons.

(iv) Account certification.

(A) Before placing the initial eligible order, the account manager must certify, in writing, to each futures commission merchant executing and/or allocating any part of the order that the account manager is aware of the provisions of this paragraph and is, and will remain, in compliance with the requirements of this paragraph.

(B) Before placing the initial eligible order, the account manager must provide each futures commission merchant allocating the order with a list of eligible futures accounts.

(v) Allocation.

(A) The account manager and the futures commission merchant allocating the order must allocate fills from each eligible order to eligible participating customer accounts prior to the end of the day the order is executed, as specified by exchange rules for this purpose.

(B) Allocations of eligible orders must be fair and non-preferential, taking into account the effect on each relevant portfolio in the bunched order.

(vi) Recordkeeping.

(A) Each eligible order must be identified on the office and floor order tickets at the time of placement. These order tickets also must identify the account manager placing the order.

(B) Each transaction resulting from an eligible order must be identified on contract market trade registers and other computerized trade practice surveillance records.

(C) The futures commission merchant carrying the account must identify each trade resulting from the execution of an eligible order on confirmation statements provided to eligible customer accounts.

(D) Each account manager must make available, upon request of any representative of the Commission or the United States Department of Justice, the following:

(*1*) The customer consent documents required pursuant to paragraph (a-1)(5)(iii)(A) of this section; and

(*2*) Records reflecting futures and option transactions, other transactions executed pursuant to the portfolio management strategy, and any other records that would identify the management strategy and relate to, or reflect upon, the fairness of the allocations.

(E) Each account manager must make available for review, upon request of an eligible customer, data sufficient for that customer to compare its results with those of other relevant customers. These data may be prepared so as not to disclose the identity of individual account holders.

(vii) Contract market rule enforcement programs. As part of its rule enforcement program, each contract market that adopts rules that allow the placement, execution, and allocation of eligible orders must adopt audit procedures to determine compliance with the certification, allocation, and recordkeeping requirements identified in paragraphs (a-1)(5)(iv), (v)(A), and (vi)(A) through (C) of this section.

* * * * *

Issued in Washington, DC on December 31, 1997 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–240 Filed 1–6–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119449–97]

RIN 1545–AV75

Qualified Zone Academy Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance to holders and issuers of qualified zone academy bonds. These proposed regulations reflect changes made by the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, 111 Stat. 788 (1997), and affect holders and issuers of qualified zone academy bonds. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by April 7, 1998. Outlines of topics to be discussed at the public hearing scheduled for May 27, 1998, must be received by May 6, 1998.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–119449–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–119449–97), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting directly to the IRS Internet site at http:www.irs.ustreas.gov/prod/taxregs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Ave. NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Timothy L. Jones, (202) 622–3980; concerning submissions and the hearing, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1.1397E–1T, published in the Rules and Regulations portion of this issue of the **Federal Register**, is issued to provide guidance to holders and issuers of qualified zone academy bonds.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 27, 1998, at 10:00 a.m. in Room 2615, Internal Revenue Building, 1111 C Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 C.F.R. 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 7, 1998 and submit an outline of the topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by May 6, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

Several persons from the Office of Chief Counsel and the Treasury Department participated in the development and drafting of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1397E–1 also issued under 26 U.S.C. 1397E(b) and 1397E(d). * * *

Par. 2. Sections 1.1397E–1 is added to read as follows:

§ 1.1397E–1 Qualified zone academy bonds.

[The text of this proposed section is the same as the text of § 1.1397E–1 published elsewhere in this issue of the **Federal Register.]**

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–17 Filed 1–6–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–209485–86]

RIN 1545–AI93

Continuation Coverage Requirements of Group Health Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance under section 4980B of the Internal Revenue Code on certain changes made by the Health Insurance Portability and Accountability Act of 1996, the Omnibus Budget Reconciliation Act of 1989, and the Technical and Miscellaneous Revenue Act of 1988 relating to the continuation coverage requirements applicable to group health plans. The regulations will generally affect sponsors of and participants in group health plans, and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be received by April 7, 1998.

ADDRESSES: Send Submissions to: CC:DOM:CORP:R (REG–209485–86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209485–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer, 202–622–4695; concerning submissions or requests for a hearing, LaNita VanDyke, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 9, 1998. Comments are specifically requested concerning the following:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information is in proposed § 54.4980B–1(a)(1)(iii). This collection of information is required by statute. The likely respondents are individuals. Responses to this collection of information are required in order to obtain the benefit of an extended period during which a group health plan must make COBRA continuation coverage available.

Estimated total annual reporting burden: 440 hours.

The estimated annual burden per respondent: 1 minute.

Estimated number of respondents: 26,400.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amended the Code to add health care continuation coverage requirements. These provisions, now set forth in section 4980B of the Code,[1] generally apply to a group health plan maintained by an employer with at least 20 employees, and require such a plan to offer each qualified beneficiary who would otherwise lose coverage as a result of a qualifying event an opportunity to elect, within the applicable election period, COBRA continuation coverage. The COBRA continuation coverage requirements were amended on various occasions,[2] most recently under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Proposed regulations providing guidance under the continuation coverage requirements as originally enacted by COBRA and as amended by the Tax Reform Act of 1986, were published as proposed Treasury Regulation § 1.162–26 in the **Federal Register** of June 15, 1987 (52 FR 22716).

The new set of proposed regulations being published in this notice of proposed rulemaking reflects principally the most recent set of statutory changes—those made by HIPAA—but also reflects certain changes made by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) and by the Omnibus Budget Reconciliation Act of 1989 (OBRA '89).

[1] The COBRA continuation coverage requirements were initially set forth under section 162(k) of the Code, but were moved to section 4980B of the Code by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). TAMRA changed the sanction for failure to comply with the continuation coverage requirements of the Code from a disallowance of certain employer deductions under section 162 (and denial of the income exclusion under section 106(a) to certain highly compensated employees of the employer) to an excise tax under section 4980B.

[2] Changes affecting the COBRA continuation coverage provisions were made under the Omnibus Budget Reconciliation Act of 1986, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, the Small Business Job Protection Act of 1996, and the Health Insurance Portability and Accountability Act of 1996. The statutory continuation coverage requirements have also been affected by an amendment made to the definition of group health plan in section 5000(b)(1) by the Omnibus Budget Reconciliation Act of 1993; that definition is incorporated by reference in section 4980B(g)(2).

Explanation of Provisions

Disability Extension; Permitted Premiums

As originally enacted, the COBRA continuation coverage provisions required plans to make continuation coverage available for up to 18 months in the case of a qualifying event that is a termination of employment or reduction in hours of employment and for up to 36 months for all other qualifying events, such as death of the covered employee, divorce from the covered employee, or a dependent child ceasing to be a dependent under the generally applicable requirements of the plan. If someone became entitled to the 18-month maximum period of coverage and experienced a second qualifying event during that period of COBRA continuation coverage, then the law provided an extended period of coverage so that there would be a total of 36 months of COBRA continuation coverage measured from the date of the first qualifying event.

Under OBRA '89, provisions were added allowing the 18-month period to be extended to 29 months if a qualified beneficiary was disabled at the time of the qualifying event. Section 421 of HIPAA changed these provisions by requiring plans to allow the disability extension if a qualified beneficiary is disabled within the first 60 days of COBRA continuation coverage and by clarifying that nondisabled qualified beneficiaries with respect to the same qualifying event are also entitled to the disability extension.

Thus, under the current provisions in the Code, all qualified beneficiaries with respect to the same qualifying event are entitled to an extension of the maximum period of COBRA continuation coverage from 18 to 29 months, if three conditions are satisfied. First, each qualified beneficiary must be a qualified beneficiary in connection with a qualifying event that is a termination of employment or reduction in hours of employment. Second, a qualified beneficiary must be determined to have been disabled (within the meaning of title II or title XVI of the Social Security Act) within the first 60 days of COBRA continuation coverage. Third, the plan administrator must be provided with a copy of the determination of disability on a date that is both within 60 days after the determination is issued and before the end of the initial 18-month period of COBRA continuation coverage. In the case of a disability extension, for any period after the end of the 18th month of COBRA continuation coverage, the plan may generally require payment for COBRA continuation coverage in an amount that does not exceed 150 percent of the applicable premium.

These proposed regulations clarify the statutory disability extension requirements in several respects. For example, the first 60 days of COBRA continuation coverage are generally measured from the date of the termination of employment or reduction in hours of employment. An exception applies if coverage would be lost (in the absence of an election for COBRA continuation coverage) after the date of the qualifying event and if the plan has elected to measure both the maximum coverage period and the period for providing notice upon the occurrence of a qualifying event from the date that coverage would be lost rather than from the date of the qualifying event. In such a case, the first 60 days of COBRA continuation coverage are also measured from the date that coverage would be lost.

In addition, these proposed regulations make clear that the disability extension applies to each qualified beneficiary, whether or not disabled, that each qualified beneficiary has an independent right to the disability extension, and that any of the qualified beneficiaries may provide the plan administrator with a copy of the determination of disability.

Another clarification relates to the period during which the plan may charge 150 percent of the applicable premium. These proposed regulations make clear that the plan may require payment equal to 150 percent of the applicable premium if a disabled qualified beneficiary experiences a second qualifying event during the disability extension. In such a case (that is, where the disabled qualified beneficiary is entitled to a 36-month maximum coverage period only because a second qualifying event occurs during the disability extension), the plan may require payment of 150 percent of the applicable premium until the end of the 36-month maximum coverage period.

HIPAA also added provisions to the Code, in section 9802(b), that generally prohibit discrimination in premiums on the basis of health status, including on the basis of disability. These proposed regulations clarify that a plan that requires a disabled qualified beneficiary entitled to the disability extension to pay 150 percent of the applicable premium (as permitted by the proposed regulations) does not for that reason fail to comply with the nondiscrimination requirements of section 9802(b).

These proposed regulations do not address the extent to which a plan can charge 150 percent of the applicable premium to a qualified beneficiary who is not disabled. Comments are requested on this issue.

Newborn and Adopted Children Treated as Qualified Beneficiaries

Section 421 of HIPAA also provides that a child born to or placed for adoption with the covered employee during a period of COBRA continuation coverage is a qualified beneficiary. Such a child generally is eligible to be enrolled immediately for COBRA continuation coverage under the plan. These proposed regulations clarify that the maximum coverage period for such a child is measured from the date of the qualifying event that gives rise to the period of COBRA continuation coverage during which the child is born or adopted and not from the date of birth or placement for adoption. Thus, the child's maximum period of COBRA continuation coverage would end at the same time as the maximum period for other family members. In addition, the statutory term *placement for adoption* is clarified to include an adoption that is not preceded by a placement for adoption.

Long-Term Care; MSAs

Section 321(d) of HIPAA amended section 4980B of the Code to provide that a plan does not constitute a group health plan subject to the COBRA continuation coverage requirements if substantially all of the coverage provided under the plan is for qualified long-term care services, as defined in section 7702B(c). These proposed regulations permit a plan to use any reasonable method in determining whether substantially all of the coverage is for qualified long-term care services. Further, the proposed regulations reflect section 106(b)(5), added by HIPAA, which provides that COBRA continuation coverage is not required to be made available with respect to medical savings accounts (MSAs), as defined under section 220.

Good Faith/Reasonable Interpretations

The effective date of these regulations, when made final, will not be earlier than the date of publication of final regulations in the **Federal Register**. For the period before the effective date of final regulations, plans and employers are required to operate in good faith compliance with a reasonable interpretation of the statutory requirements. Compliance with the terms of the proposed regulations concerning the matters addressed is deemed to be good faith compliance with a reasonable interpretation of the statutory requirements. Actions inconsistent with the terms of the proposed regulations will not necessarily constitute a lack of good faith compliance with a reasonable interpretation of the statutory requirements; whether there has been good faith compliance with a reasonable interpretation of the statutory requirements will depend on all the facts and circumstances of each case. Plans and employers may also continue to rely on proposed Treasury Regulation § 1.162–26 (published on June 15, 1987 in 52 FR 22716), except to the extent that that proposed regulation is inconsistent with statutory amendments made after its date of publication.

Future Guidance Concerning COBRA Obligations in Certain Stock and Asset Sales

Treasury and the IRS are currently considering the issuance of guidance concerning COBRA obligations in cases involving a sale of stock in an employer that causes the employer to become a member of another controlled group of corporations (a ''stock sale''), or a sale of substantial assets by an employer (such as a plant or division) to another employer outside the controlled group (an ''asset sale'').

The approach under consideration generally would provide, in the case of a stock sale to a buyer maintaining a group health plan, that the buyer's group health plan (and not a plan maintained by the seller) would be responsible, after the date of the sale, for complying with the COBRA continuation coverage requirements with respect to any covered employee (and associated qualified beneficiary) whose last employment was with the sold corporation. Thus, for example, the buyer's group health plan would have the obligation, after the date of the sale, to comply with the COBRA continuation coverage requirements with respect to those individuals regardless of whether their qualifying events were connected to the sale of stock or were in advance of and not connected to the sale. If the buyer did not maintain a group health plan, then a group health plan of the seller would continue to be responsible for complying with the COBRA continuation coverage requirements with respect to qualified beneficiaries associated with the sold corporation.

In the case of an asset sale, the approach under consideration generally would provide that a group health plan maintained by the seller (and not a plan maintained by the buyer) would be responsible for complying with the COBRA continuation coverage requirements with respect to any covered employee (and associated qualified beneficiary) whose last employment was associated with the purchased assets. However, an exception would be provided if the buyer were a ''successor employer,'' in which case a group health plan of the buyer would be responsible for complying with the COBRA continuation coverage requirements with respect to qualified beneficiaries associated with the purchased assets. Consideration is being given to treating a buyer as a successor employer in connection with an asset sale only if the buyer acquires substantial assets (such as a plant or division, or substantially all of the assets of a trade or business) and continues the business operations associated with those assets without interruption or substantial change, and only if, in connection with the sale, the selling employer ceases to maintain any group health plan. The approach might also include a presumption that the cessation is in connection with the sale if it occurs within 6 months of the sale.

Comments are requested on this possible approach to assigning responsibility for compliance with the COBRA continuation coverage requirements in the context of stock sales and asset sales and on any related issues that should be addressed.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection-of-information requirement in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection-of-information requirement is imposed on individual qualified beneficiaries and not on small businesses or other small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Russ Weinheimer, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

Paragraph 1. The authority citation for Part 54 is amended in part by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.4980B–1 also issued under 26 U.S.C. 4980B. * * *

Par. 2. A new section 54.4980B–1 is added to read as follows:

§ 54.4980B–1 Certain changes to the continuation coverage requirements of group health plans.

(a) *Disability extension*—(1) *In general.* Paragraphs (a)(2), (3), and (4) of this section (describing qualified beneficiaries entitled to a disability extension, the length of the extension, and the amount that a plan can require qualified beneficiaries to pay during the extension) apply to a group health plan only if all three of the conditions of this paragraph (a)(1) are satisfied.

(i) A termination-of-employment qualifying event occurs.

(ii) An individual (whether or not the covered employee) who is a qualified beneficiary in connection with the termination-of-employment qualifying event is determined under title II or XVI of the Social Security Act to have been disabled at any time during the first 60 days of COBRA continuation coverage. For this purpose, the first 60 days of COBRA continuation coverage are measured from the date of the termination-of-employment qualifying event, except that if a loss of coverage would occur at a later date in the absence of an election for COBRA continuation coverage and if the plan provides for the extension of required periods (as permitted under section 4980B(f)(8)), then the first 60 days of COBRA continuation coverage are measured from the date on which the coverage would be lost.

(iii) Any of the qualified beneficiaries affected by the termination-of-employment qualifying event provides notice to the plan administrator of the disability determination on a date that is both within 60 days after the date the determination is issued and before the end of the original 18-month maximum coverage period that applies to the termination-of-employment qualifying event.

(2) *Maximum coverage period*—(i) The maximum coverage period ends—

(A) 29 months after the date of the termination-of-employment qualifying event; or

(B) 36 months after the date of the termination-of-employment qualifying event if a qualifying event (other than a bankruptcy qualifying event) occurs during the 29-month period that begins on the date of the termination-of-employment qualifying event.

(ii) If, in the absence of an election for COBRA continuation coverage, coverage under the group health plan would be lost after the date of the termination-of-employment qualifying event and the plan provides for the extension of the required periods, as permitted under section 4980B(f)(8), then the dates or periods in paragraph (a)(2)(i) of this section are measured from the date on which coverage would be lost and not from the date of the termination-of-employment qualifying event.

(iii) Nothing in section 4980B or this section prohibits a group health plan from providing coverage that continues beyond the end of the maximum coverage period.

(3) *Application to all qualified beneficiaries.* Paragraph (a)(2) of this section applies to all qualified beneficiaries entitled to COBRA continuation coverage because of the same termination-of-employment qualifying event. Thus, for example, the 29-month period applies to each qualified beneficiary who is not disabled as well as to the qualified beneficiary who is disabled, and it applies independently with respect to each of the qualified beneficiaries.

(4) *Payment during disability extension*—(i) *Disabled qualified beneficiaries*—(A) A group health plan is permitted to require a disabled qualified beneficiary described in paragraph (a)(1) of this section, for any period of COBRA continuation coverage after the end of the 18th month, to pay an amount that does not exceed 150 percent of the applicable premium. However, the plan is not permitted to require a disabled qualified beneficiary described in paragraph (a)(1) of this section to pay an amount that exceeds 102 percent of the applicable premium for any period of COBRA continuation coverage to which the qualified beneficiary is entitled without regard to the application of this paragraph (a). Thus, if a disabled qualified beneficiary described in paragraph (a)(1) of this section experiences a second qualifying event within the original 18-month period of COBRA continuation coverage, then the plan is not permitted to require the qualified beneficiary to pay an amount that exceeds 102 percent of the applicable premium for any period of COBRA continuation coverage. By contrast, if a disabled qualified beneficiary described in paragraph (a)(1) of this section experiences a second qualifying event after the end of the 18th month of original COBRA continuation coverage, the plan may require the qualified beneficiary to pay an amount that is up to 150 percent of the applicable premium for the remainder of the period of COBRA continuation coverage (that is, from the beginning of the 19th month through the end of the 36th month).

(B) A group health plan does not fail to comply with section 9802(b) and § 54.9802–1T(b) (which generally prohibit an individual from being charged, on the basis of health status, a higher premium than that charged for similarly situated individuals enrolled in the plan) with respect to a disabled qualified beneficiary described in paragraph (a)(1) of this section merely because the plan requires payment of a premium in an amount permitted under paragraph (a)(4)(i)(A) of this section.

(ii) *Nondisabled qualified beneficiaries.* [Reserved].

(b) *Newborns and adopted children.* A child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is a qualified beneficiary and generally is eligible to be enrolled immediately for COBRA continuation coverage under the plan. See section 4980B(g)(1)(A), section 9801(f)(2) and § 54.9801–6T(b) (relating to special enrollment rights of dependents of employees), and Q&A–31 of § 1.162–26 of this chapter (relating to the right of qualified beneficiaries to have new family members covered to the same extent that similarly situated active employees can have new family members covered under the plan). Such a child has the same open-enrollment-period rights as other qualified beneficiaries with respect to the same qualifying event (see Q&A–30(c) of § 1.162–26 of this chapter) and would be entitled to a 36-month maximum coverage period if a second qualifying event occurred while the child was in a period of COBRA continuation coverage resulting from a termination-of-employment qualifying event. The maximum coverage period for such a child is measured from the same date as for other qualified beneficiaries with respect to the same qualifying event (and not from the date of the birth or placement for adoption). In contrast, neither the covered employee, the spouse of the covered employee, nor any other dependent child of the covered employee is a qualified beneficiary unless that person is covered under a group health plan on the day before a qualifying event. See also Q&A–31 of § 1.162–26 of this chapter.

(c) *Plan providing long-term care.* A plan is not subject to the COBRA continuation coverage requirements if substantially all of the coverage provided under the plan is for qualified long-term care services (as defined in section 7702B(c)). For this purpose, a plan is permitted to use any reasonable method in determining whether substantially all of the coverage under the plan is for qualified long-term care services.

(d) *Medical savings accounts.* Under section 106(b)(5), amounts contributed by an employer to a medical savings account are not considered part of a group health plan that is subject to section 4980B. Thus, a plan is not required to make COBRA continuation coverage available with respect to a medical savings account. However, a high deductible health plan that covers a medical savings account holder may be a group health plan and thus may be subject to the COBRA continuation coverage requirements.

(e) *Definitions.* For purposes of this section—

Applicable premium is defined in section 4980B(f)(4).

Bankruptcy qualifying event is a qualifying event described in section 4980B(f)(3)(F) (relating to certain bankruptcy proceedings).

Covered employee is defined in section 4980B(f)(7).

Group health plan is defined in section 4980B(g)(2).

High deductible health plan is defined in section 220(c)(2).

Medical savings account is defined in section 220(d).

Placement, or being placed, for adoption means the assumption and retention by the covered employee of a legal obligation for total or partial support of a child in anticipation of the adoption of the child. The child's placement for adoption with the covered employee terminates upon the termination of the legal obligation for total or partial support. For purposes of this section and section 4980B, a child who is immediately adopted by the covered employee without a preceding placement for adoption is considered to be placed for adoption on the date of the adoption.

Qualified beneficiary is defined in section 4980B(g)(1).

Qualified long-term care services is defined in section 7702B(c).

Termination-of-employment qualifying event is a qualifying event described in section 4980B(f)(3)(B) (relating to qualifying events that occur as a result of a termination of employment, other than for gross misconduct, or reduction of hours of employment).

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–232 Filed 1–6–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA–015–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Louisiana regulatory program (hereinafter the ''Louisiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of an addition of a definition for ''replacement of water supply'' to the Louisiana Surface Mining Regulations. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Louisiana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t, February 6, 1998. If requested, a public hearing on the proposed amendment will be held on February 2, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on January 22, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C.Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Louisiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, *Telephone:* (918) 581–6430.

Department of Naturnal Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804–9275, *Telephone:* (504) 342–5540.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, *Telephone:* (918) 581–6430..

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning the Louisiana program and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Description of the Proposed Amendment

By letter dated December 4, 1997 (Administrative Record No. LA–363), Louisiana submitted a proposed amendment to its program pursuant to SMCRA. Louisiana submitted the proposed amendment in response to a July 2, 1996, letter (Administrative

Record No. 358) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposes to amend the Louisiana Surface Mining Regulations at section 105 by adding a definition for ''replacement of water supply.'' The full text of the proposed program amendment submitted by Louisiana is presented below.

Replacement of water supply—with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

a. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

b. If the affected water supply was not needed or the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Louisiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on January 22, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 30, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–307 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–045–1 9804b; FRL–5946–6]

Approval and Promulgation of Implementation Plans Alabama: Revisions to Several Chapters of the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Alabama through the Department of Environmental Management on August 28, 1997, the State of Alabama through the Department of Environmental Management (ADEM) submitted a SIP submittal to revise the ADEM Administrative Code for the Air Pollution Control Program. Revisions were made to Chapters 335–3–1, 335–3–3 and 335–3–6. In the final rules section of this **Federal Register**, the EPA is approving the State of Alabama's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 6, 1998.

ADDRESSES: Written comments on this action should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

U.S. Environmental Protection Agency, Atlanta Federal Center, Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: December 5, 1997.

A. Stan Meiburg,

Acting Regional Administrator.

[FR Doc. 98–358 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 73

[FRL–5947–4]

RIN 2060–AG86

Acid Rain Program: 1998 Reallocation of Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act, as amended by Clean Air Act Amendments of 1990, (''the Act'') authorizes the Environmental Protection Agency (''EPA'' or ''Agency'') to establish the Acid Rain Program. The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. On March 23, 1993, (''1993 rule'') the Agency promulgated final rules allocating allowances to utility units. That rule provided the methodology for revising allowances for utility units in 1998, based on statutory requirements. On December 27, 1996 (''1996 proposal''), the Agency proposed changes in unadjusted allowances of certain units. These changes were proposed in response to litigation over the Agency's interpretation of section 405(c) of the Act, to correct documented Agency errors in making the allocations, and to incorporate more recent information on whether or not certain new units met requirements pertaining to their construction or commencement of commercial operation. Today's proposed rule addresses how the Agency will implement the revision methodology in the 1993 rule and incorporate changes in unadjusted allowances from the 1996 proposal.

DATES: Comments on the regulations proposed by this action must be received on or before March 9, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than January 19, 1998. If a hearing is held it will take place January 21, 1998, beginning at 10:00 am.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–97–23) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington DC 20460.

Docket. Docket No. A–97–23, containing supporting information used to develop the proposal is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address. Information on the allowance revisions in the 1996 proposal, which are incorporated in this proposal, is in Docket No. A–95–56. Information concerning the original rules and some of the revisions proposed today is found in Docket Nos. A–91–36 (proposed National Allowance Data Base), A–92–06 (proposed allowance allocation rule), and A–92–07 (final National Allowance Data Base). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski at (202) 564–9074 Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; or the Acid Rain Hotline at (202) 564–9620. Electronic copies of this rulemaking and technical support documents can be accessed through the Acid Rain Division website at www.epa.gov/acidrain and the EPA's Technology Transfer Network (TTN) electronic bulletin board at (919) 541–5742.

SUPPLEMENTARY INFORMATION:

I. Affected Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and the exemptions in §§ 72.7 and 72.8 of title 40 of the Code of Federal Regulations and the revised §§ 72.6, 72.7, 72.8, and 72.14 proposed on December 27, 1996 (61 FR 68340). If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

The overall goal of the Acid Rain Program is to achieve significant environmental benefits through reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X), the primary precursors of acid rain. To achieve this goal at the lowest cost to society, the program employs both traditional and innovative, market-based approaches for controlling air pollution. In addition, the program encourages energy efficiency and promotes pollution prevention.

Title IV of the Clean Air Act sets as a primary goal the reduction of annual SO_2 emissions by 10 million tons below 1980 levels. To achieve these SO_2 emissions reductions, the law requires a two-phase tightening of restrictions placed on fossil fuel-fired power plants. Phase I began in 1995 and affected 110 mostly coal-burning electric utility plants located in 21 eastern and midwestern states. Phase II, beginning in 2000, tightens the annual emissions limits imposed on these large, higher emitting plants and also sets restrictions on smaller or cleaner plants fired by coal, oil or gas. Title IV also requires certain coal-fired units to reduce their emissions of NO_X to a level achievable through installation of applicable NO_X reduction technology. (See 40 CFR part 76.)

The centerpiece of the Acid Rain Program is a unique trading system in which allowances (each authorizing the emission of up to one ton of SO_2) may be bought and sold at prices determined by the free market. Most existing utility units are allocated allowances based on their historic fuel use and emission limitations specified in the Act. Affected utility units are required to limit SO_2 emissions to the number of allowances they hold, but because allowances are transferrable, utilities may meet their emissions control requirements in the most cost-effective manner.

This rule concerns the allocation of allowances for Phase II of the program. Phase II allowances were allocated by rulemaking on March 23, 1993 (58 FR 15634). However, section 403(a)(1) of the Act requires EPA to publish a revised statement of allowance allocations no later than June 1, 1998. That revision must account for units eligible for allowances under section 405(g)(4) (units commencing operation from 1992 through 1995), section 405(i)(2) (units that reduce their emissions rates), and section 409 (units with approved repowering extensions). The rule establishing the methodology for the 1998 revision of allowance allocations was published on March 23, 1993 and codified at 40 CFR 73.11. This rulemaking implements the revision methodology.

This proposal attempts to provide an accurate, but conservative, view of the allowances to be allocated to all units. Several issues affecting allowances still require EPA to provide estimates of allowance allocations at this time. EPA has made every effort not to overstate allowance allocations at this time. Thus, any modification to the allocations from this proposal will likely result in an increase in allowances for most units upon promulgation of the final rule, except as specified below.

III. Part 73: Allowances

A. Method for Revision

In order to facilitate timely notice on many issues, EPA has chosen to prepare the 1998 revision of allowances in a staged approach. The 1996 proposal was the first stage and included deletion of certain unaffected units from Table 2 of § 73.10, changes in unadjusted allowances of certain units, and deletion of units from and addition of units to Table 3 of § 73.10. The comment period ran from December 27, 1996 through February 10, 1997. EPA has not yet taken final action on the 1996 proposed changes to part 73. Except for the issues raised in today's proposed rule concerning § 73.19 (units under section 405(i)(2) of the Act) and distribution of proceeds from the annual auction of allowances, no comments are requested, and none should be submitted, concerning any of the proposed changes in the 1996 proposal.

The second stage is embodied in today's proposal. EPA followed the 1998 reallocation methodology set forth in the existing §§ 73.11 and 73.12 and applied it to the data in NADB version 2.2, which is discussed below. The technical documents explaining in detail the application of the 1998 reallocation methodology are included in the docket. The only issues raised in today's proposal are discussed in subsections B, C, D, and E below, regarding units under section 405(i)(2) of the Act, distribution of proceeds from the annual allowance auction, the repowering reserve, and units listed under Table B of section 405(g)(2) of the Act. Also, as discussed below, the regulatory tables allocating allowances are proposed to be consolidated into a single, simplified table.

Changes proposed in the first stage, the 1996 proposal, and changes (including the revised allowance allocations resulting from the application of the 1998 reallocation methodology) proposed today are together incorporated into the proposed Table 2 and, subject to comment, will be finalized in one final rule, the last stage of the 1998 reallocations. For example, the changes to unadjusted allowances in the 1996 proposal affect the ratchet used in today's proposal to ensure that total annual Phase II allowances allocations do not exceed 8.95 million. *See* 61 FR 68357. Finalizing all allowance changes in a single rule, as explained in the 1996 proposal (*id.*), will enable EPA to minimize administrative burden and cost, as well as potential confusion over allowance allocations, by reducing the number of times allowance allocation tables must be developed and published.

B. Units Under Section 405(i)(2)

A few units may be eligible for a special allocation method based on eligibility requirements (which include, *inter alia*, a maximum level for the unit's actual emission rate) under section 405(i)(2). In the 1993 rule, EPA preliminarily determined that six units may be eligible and listed those units and resulting allowances in Table 4 of § 73.10(d). Further, EPA required, in

§ 73.19, that the actual 1997 emission rate be used to determine eligibility for section 405(i)(2) allowances.

The 1996 proposal modified § 73.19 to use 1996 actual SO_2 emissions rate data as reported by the unit's continuous emissions monitors (CEMS) under part 75, rather than 1997 emissions data collected by the Energy Information Administration (EIA), to determine whether the units are eligible. In a comment on the proposal, the owner of one of the plants requested that the actual emission rate for year 2000 be used for eligibility and that, if the unit did not qualify, its additional allowances be rescinded and not reallocated. Because the comments raise a new option, EPA is reopening this limited issue and requests comment.

In the statute at section 405(i)(2)(B), one criteria for eligibility is that ''actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000.'' In the 1992 allowance allocation proposal (57 FR 29940, 29956, July 7, 1992), EPA assumed that statutory phrase ''as of January 1, 2000'' meant that calendar year 1999 emission rate should be used. However, in the 1992 proposal, EPA also discussed a perceived discrepancy between the use of the 1999 emission rate under section 405(i)(2)(B) and the mandate under section 403(a)(1) that allowance allocations be finalized no later than June 1, 1998. EPA decided to use calendar year 1997 emission rates, in the 1993 allowance allocations rule (58 FR 15634), because 1997 will be the latest year of emissions data prior to the required final allocation.

The option raised by the commenter is for allocation of additional allowances under section 405(i)(2) to be held in abeyance until the unit is determined to be eligible based on part 75 emissions data as of January 1, 2000 (which, EPA believes, refers to calendar year 1999 emissions). Any allowances reserved for allocation under section 405(i)(2) that are not actually allocated based on 1999 emissions would not be utilized or otherwise reallocated to other utility units. The commenter believes this option fulfills the statutory requirements for finalized allowances in 1998 and for using emissions data as of January 1, 2000. Also, the commenter pointed out that section 403(a)(1) does not require EPA to allocate exactly 8.9 million basic allowances, but no more than 8.9 million allowances. As the commenter emphasized, the allocation under section 405(i)(2) is no more than 5000 allowances, or only 0.05 percent of the unadjusted basic allowances.

Also, the commenter suggested that EPA could require advance notification to EPA by the unit's designated representative as to whether the utility involved intends to meet the section 405(i)(2) requirements. EPA does not presently believe that this notification process is necessary, given that only six units, operated by two utilities, are likely to be eligible. However, comments on this suggestion are requested.

EPA seeks comments on which calendar year of emissions data to utilize in determining eligibility under section 405(i)(2). One option is to take the approach in the 1993 rule but to use the 1997 CEMS (rather than EIA) emissions data. CEMS data under part 75 is the most accurate and timely emissions data. EPA could then prepare the final 1998 reallocation rule as quickly as possible while ensuring sufficient time for the Agency to complete proper quality assurance of the emissions data. For the purposes of this proposed rule, this option is set out in the rule language. A second option of using 1999 emissions data was raised by the commenter on the 1996 proposal. A third option would be to use the first calendar year, from 1996 up to 1999, when the unit's emissions, determined using CEMS data, are less than the 1.2 lb/mmBtu rate. Thus, any unit that achieves the 1.2 lb/mmBtu rate early would not be delayed in having its allowances allocated. EPA requests comment on these and any other options.

EPA also seeks comment on whether any unallocated allowances reserved for allocation under section 405(i)(2) should be reallocated to other utility units after the 1998 rulemaking. As emphasized by the commenter, the allowances would not exceed 5000 in total. The allowances would reduce the ratchet by some small amount and would be spread among the units with Phase II allocations in proportion to the existing allocations.[1] The administrative burden of reallocating the allowances would be considerable, due to the need to develop allowance software and to recalculate all basic allowances and refinalize Table 2 of § 73.10(b). Thus, EPA believes that the burden of reallocating outweighs the benefit to any given utility and that there should not be any such reallocation.

For purposes of this proposal and, in particular for preparation of the proposed revisions of Table 2, EPA is using the first option of basing qualification for allowances under section 405(i)(2) on 1997 CEMS emissions data and is assuming that all six units potentially qualifying for the allowances will actually qualify. Note that if any of the six units do not qualify for the allowances (including the section 405(i)(2) allowances) listed in the body of the proposed Table 2, the unit will receive allowances as noted in footnote 2 of the table.

C. Distribution of Proceeds From Annual Allowance Auction

As required under section 416 of the Act and subpart E of part 73, EPA has facilitated the auction of allowances since 1993. Phase I and Phase II allowances are deducted as shown in Tables 1 and 2 of 40 CFR § 73.10. Phase II deductions are calculated as a fixed percentage of each unit's unadjusted basic allowances, so the total number of allowances reserved equals 250,000. Each unit's designated representative then receives a portion of the proceeds from the auction based on the number of allowances deducted.

The 1996 proposal changed the unadjusted basic allowances for a few units, deleted many units from Tables 2 and 3 of § 73.10, and added two units. The proposal made clear that the designated representative of each unit to be deleted that has received an allowance allocation must surrender the allowances to the Agency and must return any proceeds received from the auction. The proposal also stated that the Agency will, in a future action, explain how the proceeds will be redistributed. No comments were received on the issue of the distribution of proceeds.

At this time, EPA seeks to clarify how proceeds from the auction will be distributed. In developing a proposal, the Agency considered the following needs: to minimize the number of allowances and proceeds to be surrendered, to minimize any disruption to the Allowance Tracking System, and to fairly distribute proceeds.

The Agency recognizes that five auctions have already taken place and proceeds distributed. To provide a complete redistribution of proceeds based on the 1996 proposal would be extremely burdensome to the Agency while providing a minimal benefit to any unit. Therefore, the Agency is rejecting the option of redistributing all auction proceeds.

However, the Agency finds that providing no redistribution would be unfair for the few affected units that had their unadjusted basic allowance allocation changed or were found to be

[1] Thus, every unit would receive an equal percentage increase (0.05%) in allowances, rounded to whole allowances. Because of the rounding, many units would receive no additional allowances. Please refer to EPA's supplementary material regarding section 405(i)(2), found in the docket.

eligible to receive allocations, in the 1996 proposal.[2] Moreover, EPA continues to believe that, as provided in the 1996 proposal, all units deleted from the tables of affected units must surrender any allowances and proceeds received. The Agency has determined that this presents no significant problems because very few of the units deleted had designated representatives and, so, few transferred any allowances and received any proceeds. Because the proceeds were not distributed for these units, the Agency already has sufficient proceeds to provide a distribution to units that had changes to their unadjusted basic allowances or were found to be eligible for allowances.

In summary, the Agency's proposal is that, for all auctions completed before the finalization of this rulemaking: (1) units deleted from Table 2 of § 73.10, and units deleted from Table 3 and not added to Table 2, must surrender any allowances allocated and any proceeds received; (2) affected units that had changes to their unadjusted basic allowance allocation will receive proceeds based on the changed amount; and (3) the proceeds for all other units will not be changed. To implement this proposal, a column in Table 2 is provided that lists the number of allowances each unit has provided for each auction taking place from 1993 through 1998. References in § 73.27 for auctions before June 1, 1998 will refer to this new column. Also, the Agency notes that paragraphs (b)(4) and (c)(4) of § 73.27 are unnecessary because allowances from calendar years 2010 and thereafter are not auctioned before 2003 and, so the paragraphs will be eliminated.

D. Revision of the Repowering Reserve

Finalization of the allowance allocations is also dependent upon a reasonably accurate calculation of the number of allowances allocated for units with repowering extensions. For the 1993 rule, EPA estimated that a set-aside of up to 500,000 allowances could be needed for repowering extensions. EPA based this estimate on 10 GW of capacity being repowered. To create the set-aside, EPA withheld 50,000 allowances for each year from 2000 through 2009 from Phase II units' basic allowance allocations. 58 FR 15642.

State and local air permitting authorities received at least 88 repowering extension plans; however, only 16 petitions for repowering have been filed with the Agency. For this proposal, EPA would like to set aside more allowances for the repowering reserve than may be necessitated by these plans as submitted, in case the number of allowances under the plans are adjusted. The Agency believes that continuing to provide the existing repowering reserve is appropriate for this proposal. Therefore, EPA is continuing to provide a set-aside of 500,000 allowances.

Before issuing a final rule on this rulemaking, EPA will consider the status of the existing plans. EPA intends, in the final rule, to provide a set-aside limited to the amount necessary to implement all nonconditional approved repowering extension plans. This will likely result in a somewhat smaller set-aside than that provided in this proposal.

E. Treatment of Allocations to Certain Units Under Table B

For Phase II, most units receive allowance allocations based on various formulae specified in the Act. However, eleven units are specified in Table B of section 405(g)(2) to receive a fixed number of basic allowances. As provided in the 1993 rule, the owner or operator of any of these units would receive the Table B allowances unless it elected to receive allowances under another section of the Act for which the unit is eligible. 57 FR 29955. Only three units (Clover 1 and 2 and Twin Oak 1) elected to receive allowances under another section (in all three cases, section 405(g)(4)) if they were eligible. Clover 1 and 2 demonstrated eligibility for allowances under section 405(g)(4) and are provided their allowance allocations in the proposed Table 2. The 1996 proposal stated that Twin Oak 1 did not commence operation in time to be eligible for section 405(g)(4) and so would receive allowances under section 405(g)(2). As provided in the 1993 rule, all other units listed in Table B of section 405(g)(2) will receive allowances listed in Table B as unadjusted basic allowances, and the Agency is not reopening any issue regarding such units. Comments are not requested on Table B units other than Clover 1 and 2.

F. Revised Tables

The 1993 final allocation of allowances included three allowance tables—Table 2 listing most affected units, Table 3 listing units expected to be eligible under section 405(g)(4), and Table 4 listing units expected to be eligible under section 405(i)(2). Tables 3 and 4 were provided to assist unit owners identify the appropriate units for which additional information was required under the rule.

For the 1998 reallocation of allowances, EPA does not believe it is necessary to continue providing separate Tables 3 and 4. EPA is proposing to have only one table, Table 2, for all Phase II allowance allocations.

Also, Table 2 in the 1993 rule provided sufficient information to recalculate allowances once the number of allowances under approved repowering plans and under section 405(g)(4) and section 405(i)(2) were known. The table included three pieces of identifying information and nine columns of allowance information. This magnitude of data resulted in very small print type.

EPA is endeavoring to make Table 2 more readable in this rulemaking. The Agency proposes to include in Table 2 only the information necessary for the operation of the program. To provide for distribution of proceeds from the allowance auction and sale, the table needs to include the special allowance reserve values for 2000 and 2010. Also, the repowering reserve values need to be listed in case any repowering allowances are subsequently forfeited due to failure of the repowering project under § 72.44(g). Of course, final allocations for 2000 and 2010 are listed. The other columns provided in 1993—unadjusted basic allowances for 2000 and 2010, additional basic allowances, and total bonus allowances—are eliminated. This information is provided in the ''Technical Documentation for the Proposed 1998 Reallocation of Allowances,'' available from the sources listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble. Also, as noted above, a column is provided that lists the reserve deductions for the auctions that took place from 1993 through 1998.

A number of plants and units have had name changes since 1993, and those changes are reflected in the proposed Table 2 if the designated representative for the unit requested such a change. Utilities may request plant or unit name changes as comments on today's proposal. Name changes received after the comment period will not be reflected in the final rule.

G. Miscellaneous

EPA proposes to remove § 73.16 (regarding Phase I early reduction credits), as no longer necessary because such credits have already been fully implemented. EPA also proposes to remove §§ 73.11 and 73.12(b) (setting forth the 1998 reallocation

[2] A total of 17 units are in this category, as explained in the 1996 proposal. Nine units have changes due to resolution of litigation. Three units have changes due to data errors by the Agency. Four units were found to be eligible for allocations. One unit, Twin Oak 2, as discussed below, is eligible only for allocations under § 405(g)(2).

methodology), as no longer necessary because the results of applying the 1998 reallocation methodology are set forth in proposed Table 2 and will be in the final Table 2. References to the removed provisions are deleted or replaced by references to the appropriate columns of proposed Table 2.

Today's proposed rule also changes all references to the existing Tables 2, 3, and 4 in § 73.10 to be consistent with the proposed simplification of those allowance tables. The proposed rule removes or corrects provisions that cite allowance tables not in the proposed rule or that are otherwise superseded by the proposed Table 2.

IV. National Allowance Database

Some changes have been made to the National Allowance Data Base (NADB) since issuance of the March 23, 1993 notice of availability of the NADB. (58 FR 15720, March 23, 1993.) The database used to calculate allowances proposed herein is NADB version 2.2 and is available from the sources listed in the **FOR FURTHER INFORMATION CONTACT** section above.

The changes to the NADB are minor. All units listed in NADB version 2.11 are listed in NADB version 2.2, and no additional units are listed. The NADB field for sequence number remains unchanged.

The only substantive changes included in the NADB version 2.2 are the new data and data corrections that are set out in the 1996 proposal. The basis for these changes was explained in the proposal (61 FR 68355–62), and no adverse comments on them were received. EPA is *not* reopening consideration of these changes, and no further comment on them is requested.

Most of the changes in the NADB are not substantive in that they do not affect allowance allocations and are simply to identification fields, such as boiler identifier, ORIS plant code, or operating utility. All such changes were initiated by the operating utility and accepted by EPA. EPA has decided to treat nonsubstantive identifying information in the NADB differently from data used to calculate allowances by allowing utilities to request changes to identifying information fields. Changing identifying information will make the NADB more usable but will not impact allowance allocations.

Consistent with the approach taken in the March 23, 1993 notice (58 FR 15720) and the 1996 proposal (61 FR 68357–58), EPA will not address any other types of alleged errors and will not consider new requests for data changes (except nonsubstantive identifying information discussed above), new submissions, or new requests for outage adjustments. Except as set forth in the 1996 proposal, EPA will not consider any issues that were addressed in the 1992 and 1993 database notices (57 FR 30034, July 7, 1992; 58 FR 15720) or any issues that could have been raised in connection with NADB versions 2.0 and 2.1. EPA is foreclosing any further comment on such matters because ample opportunity for comment was provided on the previous versions of the NADB. Except as discussed above, further comment on issues in the 1996 proposal is also foreclosed. However, EPA will accept comments on nonsubstantive identifying information. Comments on such information received before the close of the comment period will, if accepted by the Agency, be incorporated into the final rule.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that this rule is not a ''significant regulatory action.''

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

The proposed revisions to part 73 will not have a significant effect on regulated entities or State permitting authorities. Since sections 403(a) and 405(a)(3) of the Act set a nationwide cap on annual allowance allocations, any reduction of allowances would result in a small increase to the annual allocations for other units that receive allocations. As discussed in the preamble for the 1996 proposal, the revisions explained in the 1996 proposal, and incorporated in today's proposal, do not have a significant adverse impact. 61 FR 68366. The other revisions in today's proposal (*i.e.*, the treatment of allocations under section 405(i)(2)) will also not have a significant impact. Even if no units qualified for the 5000 additional allowances available under section 405(i)(2) and those allowances were not reallocated to other Phase II units, the total annual market value of these allowances would amount to about one-half million dollars, and the effect on any individual utility would be negligible.

C. Paperwork Reduction Act

This action proposing revisions to the allowance allocations rule would not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the allowance rules, 40 CFR part 73, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB Control Number 2060.0258; EPA ICR Number 1633.10.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M. St., SW (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

In the preamble of the January 11, 1993 core rules for the Acid Rain Program, the Administrator certified that the rules would not have a significant, adverse impact on small entities. 58 FR 3590, 3649. Today's proposed revisions do not add any requirements that would burden small entities. Moreover, as explained above in this preamble and the 1996 proposal (61 FR 68367), the effect of the 1998 allowance adjustments on owners and operators of the units is not significant. Most units gain allowances. The only units losing allowances are: those deemed unaffected units and, therefore, not subject to the requirements of the Acid Rain Program; those that have requested to receive all fewer basic allowances in order to receive bonus allowances; and those that have been determined to be ineligible for certain allocations, based on information supplied by the utilities. Thus, the 1998 allowance adjustments take allowances only from units when the units are not eligible to receive them or when the unit's owner or operator prefers an alternative allocation. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 73

Environmental protection, Acid rain, Air pollution control, Electric utilities, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 73 is proposed to be amended as set forth below.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 73.10 is amended by:

a. In paragraph (b)(1) removing the words ''Table 2 Column E'' and adding, in their place, the words ''Table 2 Column C''; and removing the words '', except that units listed in both Table 2 and Table 4 will be allocated allowances as specified in Table 4 Column C, multiplied by .9011, reduced by 1.3185 times Table 2 Column B, and increased by Table 2 Columns C and D'';

b. In paragraph (b)(2) removing the words ''Table 2 Column I'' and adding, in their place, the words ''Table 2 Column F''; and removing the words '', except that units listed in both Table 2 and Table 4 will be allocated allowances as specified in Table 4 Column F, multiplied by .8987, reduced by Table 2 Column G, and increased by Table 2 Column H'';

c. Removing paragraphs (c) and (d) (including Tables 3 and 4); and

d. Revising Table 2 of paragraph (b) to read as follows:

§ 73.10 Initial allocations for phase I and II.

* * * * *

(b) * * *

(2) * * *

BILLING CODE 6560–50–P

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
AL	Barry	1	113	23	3,859	112	112	3,890
AL	Barry	2	124	25	4,267	124	124	4,299
AL	Barry	3	256	51	8,760	255	255	8,827
AL	Barry	4	292	58	9,993	291	291	10,069
AL	Barry	5	721	144	24,692	718	720	24,878
AL	Charles R Lowman	1	34	7	1,846	34	34	1,184
AL	Charles R Lowman	2	204	41	6,985	203	203	7,038
AL	Charles R Lowman	3	171	34	5,861	171	171	5,906
AL	Chickasaw	110	3	1	110	3	3	111
AL	Colbert	1	165	33	5,821	165	165	5,863
AL	Colbert	2	186	37	6,565	186	186	6,613
AL	Colbert	3	188	38	6,603	187	187	6,653
AL	Colbert	4	188	38	6,608	187	187	6,659
AL	Colbert	5	453	91	15,942	452	452	16,060
AL	E C Gaston	1	220	44	7,761	220	220	7,818
AL	E C Gaston	2	226	45	7,951	225	226	8,009
AL	E C Gaston	3	223	45	7,851	222	223	7,910
AL	E C Gaston	4	235	47	8,266	234	234	8,328
AL	E C Gaston	5	730	146	25,659	728	729	25,848
AL	Gadsden	1	57	11	1,946	57	57	1,961
AL	Gadsden	2	59	12	2,012	59	59	2,027
AL	Gorgas	5	36	7	1,749	36	36	1,251
AL	Gorgas	6	65	13	3,023	64	65	2,232
AL	Gorgas	7	72	14	3,125	72	72	2,500
AL	Gorgas	8	136	27	4,732	136	136	4,707
AL	Gorgas	9	135	27	4,720	134	134	4,653
AL	Gorgas	10	651	130	22,313	649	650	22,483
AL	Greene County	1	246	49	8,439	246	246	8,502
AL	Greene County	2	230	46	7,877	229	229	7,938
AL	James H Miller Jr	1	351	70	14,147	350	350	12,122
AL	James H Miller Jr	2	515	103	17,666	514	514	17,800
AL	James H Miller Jr	3	505	101	17,321	504	504	17,453
AL	James H Miller Jr	4	233	47	8,002	233	233	8,063
AL	McIntosh CAES	**1	27	5	933	27	27	939
AL	McWilliams	**4	0	0	0	0	0	0
AL	Widows Creek	1	70	14	3,326	70	70	2,417
AL	Widows Creek	2	61	12	3,200	61	61	2,118
AL	Widows Creek	3	71	14	3,342	71	71	2,457
AL	Widows Creek	4	78	16	3,438	78	78	2,686
AL	Widows Creek	5	85	17	3,548	85	85	2,946
AL	Widows Creek	6	66	13	3,266	66	66	2,280
AL	Widows Creek	7	161	32	7,773	161	161	5,573
AL	Widows Creek	8	153	31	7,429	153	153	5,290
AZ	Aqua Fria	1	0	0	54	0	1	34
AZ	Aqua Fria	2	0	0	65	0	1	39
AZ	Aqua Fria	3	0	0	77	0	2	67

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
AZ	Apache Station	1	10	2	329	10	10	332
AZ	Apache Station	2	41	8	1,601	41	41	1,420
AZ	Apache Station	3	82	16	2,995	82	82	2,836
AZ	Cholla	1	59	12	2,211	59	59	2,034
AZ	Cholla	2	147	29	5,414	146	146	5,067
AZ	Cholla	3	141	28	5,119	140	140	4,858
AZ	Cholla	4	225	45	8,289	225	225	7,784
AZ	Cholla	**5	0	0	0	0	0	0
AZ	Coronado	U1B	151	30	5,703	150	150	5,199
AZ	Coronado	U2B	158	32	5,871	158	158	5,465
AZ	De Moss Petrie	4	0	0	0	0	0	0
AZ	Gila Bend	**GT1	0	0	0	0	0	0
AZ	Gila Bend	**GT2	0	0	0	0	0	0
AZ	Gila Bend	**GT3	0	0	0	0	0	0
AZ	Gila Bend	**GT4	0	0	0	0	0	0
AZ	Irvington	1	0	0	16	0	0	14
AZ	Irvington	2	0	0	28	0	1	40
AZ	Irvington	3	0	0	0	0	0	2
AZ	Irvington	4	81	16	2,838	81	81	2,805
AZ	Kyrene	K-1	0	0	7	0	0	7
AZ	Kyrene	K-2	0	0	18	0	0	16
AZ	Navajo	1	723	144	26,076	721	722	24,949
AZ	Navajo	2	676	135	24,127	674	676	23,354
AZ	Navajo	3	686	137	24,905	684	686	23,693
AZ	Ocotillo	1	0	0	56	0	1	40
AZ	Ocotillo	2	3	1	131	3	4	129
AZ	Saguaro	1	5	1	203	5	5	189
AZ	Saguaro	2	0	0	25	0	1	22
AZ	Springerville	1	177	35	6,531	176	176	6,099
AZ	Springerville	2	167	33	5,723	166	167	5,765
AZ	Springerville	3	0	0	0	0	0	0
AZ	West Phoenix	4	0	0	11	0	0	9
AZ	West Phoenix	6	0	0	22	0	0	15
AZ	Yuma Axis	1	0	0	42	0	1	40
AR	Carl Bailey	01	0	0	10	0	0	8
AR	Cecil Lynch	1	0	0	0	0	0	0
AR	Cecil Lynch	2	0	0	0	0	0	0
AR	Cecil Lynch	3	0	0	3	0	0	0
AR	Flint Creek	1	421	84	15,108	420	421	14,556
AR	Hamilton Moses	1	0	0	0	0	0	0
AR	Hamilton Moses	2	0	0	0	0	0	0
AR	Harvey Couch	1	0	0	7	0	0	3
AR	Harvey Couch	2	0	0	112	0	3	113
AR	Independence	1	496	99	18,056	494	495	17,123
AR	Independence	2	496	99	18,302	495	495	17,142
AR	Lake Catherine	1	0	0	0	0	0	0

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
AR	Lake Catherine	2	0	0	0	0	0	0
AR	Lake Catherine	3	0	0	8	0	0	6
AR	Lake Catherine	4	3	1	155	3	10	337
AR	McClellan	01	0	0	15	0	0	13
AR	Robert E Ritchie	1	0	0	53	0	2	67
AR	Robert E Ritchie	2	62	12	2,136	62	62	2,138
AR	Thomas Fitzhugh	1	0	0	1	0	0	1
AR	White Bluff	1	582	116	20,824	581	581	20,116
AR	White Bluff	2	668	134	23,766	666	667	23,059
CA	Alamitos	1	78	16	2,759	78	78	2,703
CA	Alamitos	2	0	0	105	0	0	17
CA	Alamitos	3	0	0	290	0	2	81
CA	Alamitos	4	16	3	816	16	16	541
CA	Alamitos	5	112	22	4,205	112	112	3,866
CA	Alamitos	6	27	5	1,479	27	27	936
CA	Avon	1	0	0	17	0	0	14
CA	Avon	2	0	0	0	0	0	14
CA	Avon	3	0	0	0	0	0	14
CA	Broadway	B1	4	1	126	4	4	124
CA	Broadway	B2	4	1	163	4	4	155
CA	Broadway	B3	0	0	74	0	2	71
CA	Contra Costa	1	0	0	125	0	0	16
CA	Contra Costa	2	0	0	2	0	0	23
CA	Contra Costa	3	0	0	0	0	0	20
CA	Contra Costa	4	0	0	0	0	0	15
CA	Contra Costa	5	0	0	0	0	0	16
CA	Contra Costa	6	0	0	0	0	0	13
CA	Contra Costa	7	0	0	28	0	1	28
CA	Contra Costa	8	0	0	53	0	1	40
CA	Contra Costa	9	1	0	356	1	9	303
CA	Contra Costa	10	115	23	4,263	115	115	3,978
CA	Cool Water	1	0	0	10	0	0	11
CA	Cool Water	2	0	0	6	0	0	8
CA	El Centro	3	17	3	611	17	17	579
CA	El Centro	4	16	3	583	16	16	560
CA	El Segundo	1	10	2	438	10	10	357
CA	El Segundo	2	0	0	90	0	2	62
CA	El Segundo	3	1	0	182	1	5	171
CA	El Segundo	4	2	0	370	2	10	363
CA	Encina	1	13	3	488	13	13	446
CA	Encina	2	30	6	1,125	30	30	1,042
CA	Encina	3	20	4	733	20	20	680
CA	Encina	4	53	11	1,935	52	52	1,816
CA	Encina	5	69	14	2,481	69	69	2,399
CA	Etiwanda	1	3	1	116	3	3	94
CA	Etiwanda	2	0	0	29	0	1	17

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
CA	Etiwanda	3	34	7	1,365	34	34	1,169
CA	Etiwanda	4	1	0	261	1	8	271
CA	Glenarm	16	0	0	0	0	0	0
CA	Glenarm	17	0	0	0	0	0	0
CA	Grayson	4	3	1	101	3	3	87
CA	Grayson	5	1	0	36	1	1	42
CA	Harbor Gen Station	1	2	0	68	2	2	61
CA	Harbor Gen Station	2	3	1	120	3	3	107
CA	Harbor Gen Station	3	3	1	93	2	2	86
CA	Harbor Gen Station	4	3	1	103	3	3	98
CA	Harbor Gen Station	5	4	1	170	4	4	154
CA	Harbor Gen Station	**10A	20	4	695	20	20	700
CA	Harbor Gen Station	**10B	20	4	695	20	20	700
CA	Haynes Gen Station	1	17	3	678	17	17	571
CA	Haynes Gen Station	2	9	2	336	9	9	328
CA	Haynes Gen Station	3	33	7	1,237	33	33	1,131
CA	Haynes Gen Station	4	25	5	997	25	25	851
CA	Haynes Gen Station	5	35	7	1,394	35	35	1,205
CA	Haynes Gen Station	6	37	7	1,520	37	37	1,270
CA	Highgrove	1	0	0	4	0	0	3
CA	Highgrove	2	0	0	1	0	0	0
CA	Highgrove	3	0	0	1	0	0	1
CA	Highgrove	4	0	0	3	0	0	3
CA	Humboldt Bay	1	10	2	356	10	10	341
CA	Humboldt Bay	2	0	0	24	0	1	26
CA	Hunters Point	3	0	0	76	0	1	47
CA	Hunters Point	4	0	0	5	0	1	48
CA	Hunters Point	5	0	0	74	0	1	42
CA	Hunters Point	6	0	0	1	0	1	37
CA	Hunters Point	7	0	0	192	0	5	170
CA	Huntington Beach	1	33	7	1,318	33	33	1,153
CA	Huntington Beach	2	28	6	1,128	28	28	970
CA	Huntington Beach	3	1	0	161	1	2	62
CA	Huntington Beach	4	1	0	176	1	2	76
CA	Kern	1	0	0	3	0	0	2
CA	Kern	2	0	0	0	0	0	3
CA	Kern	3	0	0	13	0	0	3
CA	Kern	4	0	0	0	0	0	3
CA	Magnolia	M4	1	0	37	1	1	33
CA	Mandalay	1	34	7	1,372	33	33	1,159
CA	Mandalay	2	32	6	1,285	31	31	1,090
CA	Martinez	1	0	0	1	0	0	1
CA	Martinez	2	0	0	1	0	0	1
CA	Martinez	3	0	0	1	0	0	1
CA	Morro Bay	1	41	8	1,553	41	41	1,410
CA	Morro Bay	2	0	0	139	0	3	98

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
CA	Morro Bay	3	101	20	3,802	101	101	3,496
CA	Morro Bay	4	83	17	3,036	83	83	2,884
CA	Moss Landing	1	0	0	122	0	0	17
CA	Moss Landing	2	0	0	0	0	0	15
CA	Moss Landing	3	0	0	0	0	0	19
CA	Moss Landing	4	0	0	0	0	0	21
CA	Moss Landing	5	0	0	0	0	0	21
CA	Moss Landing	6	0	0	0	0	0	14
CA	Moss Landing	6-1	235	47	8,877	235	235	8,125
CA	Moss Landing	7	0	0	79	0	1	52
CA	Moss Landing	7-1	2	0	976	2	20	694
CA	Moss Landing	8	13	3	463	13	13	435
CA	Oleum	1	4	0	146	4	4	122
CA	Oleum	2	4	0	138	4	4	138
CA	Oleum	3	8	2	242	8	8	242
CA	Oleum	4	2	0	102	2	2	102
CA	Oleum	5	6	2	172	6	6	174
CA	Oleum	6	6	2	202	6	6	204
CA	Olive	01	3	1	132	3	3	121
CA	Olive	02	0	0	25	0	1	47
CA	Ormond Beach	1	110	22	4,498	109	109	3,785
CA	Ormond Beach	2	118	24	4,562	118	118	4,092
CA	Pittsburg	1	43	9	1,632	43	43	1,494
CA	Pittsburg	2	36	7	1,343	35	36	1,228
CA	Pittsburg	3	42	8	1,578	42	42	1,443
CA	Pittsburg	4	42	8	1,573	42	42	1,452
CA	Pittsburg	5	0	0	285	0	8	288
CA	Pittsburg	6	104	21	3,733	103	103	3,578
CA	Pittsburg	7	1	0	740	1	18	625
CA	Potrero	3-1	0	0	321	0	8	266
CA	Redondo Beach	5	0	0	80	0	4	126
CA	Redondo Beach	6	0	0	105	0	3	103
CA	Redondo Beach	7	1	0	554	1	14	483
CA	Redondo Beach	8	1	0	597	1	14	496
CA	Redondo Beach	11	0	0	36	0	0	4
CA	Redondo Beach	12	0	0	0	0	0	2
CA	Redondo Beach	13	0	0	0	0	0	4
CA	Redondo Beach	14	0	0	0	0	0	4
CA	Redondo Beach	15	0	0	0	0	0	3
CA	Redondo Beach	16	0	0	0	0	0	5
CA	Redondo Beach	17	0	0	0	0	0	6
CA	San Bernardino	1	3	1	117	3	3	105
CA	San Bernardino	2	0	0	17	0	1	19
CA	Scattergood Gen Sta	1	19	4	748	19	19	641
CA	Scattergood Gen Sta	2	17	3	655	17	17	571
CA	Scattergood Gen Sta	3	0	0	262	0	7	250

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
CA	Silver Gate	1	0	0	0	0	0	0
CA	Silver Gate	2	0	0	0	0	0	0
CA	Silver Gate	3	0	0	0	0	0	0
CA	Silver Gate	4	0	0	0	0	0	0
CA	Silver Gate	5	0	0	0	0	0	0
CA	Silver Gate	6	0	0	0	0	0	0
CA	South Bay	1	67	13	2,479	66	67	2,303
CA	South Bay	2	49	10	1,765	49	49	1,683
CA	South Bay	3	59	12	2,165	58	59	2,024
CA	South Bay	4	16	3	600	16	16	554
CA	Valley Gen Station	1	3	1	121	3	3	101
CA	Valley Gen Station	2	3	1	140	3	3	120
CA	Valley Gen Station	3	11	2	387	11	11	389
CA	Valley Gen Station	4	9	2	349	9	9	295
CO	Arapahoe	1	6	1	220	6	6	208
CO	Arapahoe	2	7	1	246	7	7	229
CO	Arapahoe	3	5	1	180	5	5	172
CO	Arapahoe	4	53	11	1,916	53	53	1,829
CO	Cameo	2	25	5	899	25	25	852
CO	Cherokee	1	59	12	2,126	59	59	2,035
CO	Cherokee	2	79	16	2,822	79	79	2,722
CO	Cherokee	3	103	21	3,740	103	103	3,562
CO	Cherokee	4	206	41	7,494	206	206	7,132
CO	Comanche	1	213	43	7,655	213	213	7,363
CO	Comanche	2	187	37	6,877	186	186	6,450
CO	Craig	C1	222	44	8,174	222	222	7,678
CO	Craig	C2	213	43	7,802	212	213	7,352
CO	Craig	C3	62	12	2,590	62	62	2,149
CO	Hayden	H1	167	33	6,030	167	167	5,776
CO	Hayden	H2	255	51	9,179	254	255	8,810
CO	Martin Drake	5	32	6	1,143	31	31	1,089
CO	Martin Drake	6	55	11	2,019	55	55	1,911
CO	Martin Drake	7	88	18	3,201	88	88	3,043
CO	Nucla	1	33	7	1,115	33	33	1,124
CO	Pawnee	1	398	80	14,363	397	398	13,761
CO	Pawnee	**2	0	0	0	0	0	0
CO	Rawhide	101	39	8	1,792	39	39	1,352
CO	Ray D Nixon	**NA1	0	0	0	0	0	0
CO	Ray D Nixon	1	122	24	4,453	122	122	4,217
CO	Valmont	14	0	0	4	0	0	0
CO	Valmont	21	0	0	20	0	0	20
CO	Valmont	24	0	0	0	0	0	0
CO	Valmont	5	86	17	3,120	86	86	2,983
CO	Zuni	1	10	2	338	10	10	341
CO	Zuni	2	0	0	0	0	0	6
CO	Zuni	3	0	0	5	0	0	9

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
CT	Bridgeport Harbor	BHB1	60	12	2,067	60	60	2,082
CT	Bridgeport Harbor	BHB2	137	27	4,700	137	137	4,735
CT	Bridgeport Harbor	BHB3	333	67	11,414	332	332	11,501
CT	Devon	3	28	6	974	28	28	981
CT	Devon	4A	5	1	169	5	5	171
CT	Devon	4B	5	1	170	5	5	172
CT	Devon	5A	4	1	154	4	4	156
CT	Devon	5B	4	1	154	4	4	156
CT	Devon	6	26	5	893	26	26	899
CT	Devon	7	81	16	2,792	81	81	2,813
CT	Devon	8	87	17	2,986	87	87	3,008
CT	English	EB13	3	1	113	3	3	113
CT	English	EB14	5	1	156	5	5	157
CT	Middletown	1	13	3	458	13	13	462
CT	Middletown	2	39	8	1,320	38	38	1,332
CT	Middletown	3	97	19	3,320	97	97	3,345
CT	Middletown	4	69	14	2,376	69	69	2,393
CT	Montville	5	35	7	1,201	35	35	1,210
CT	Montville	6	165	33	5,642	164	164	5,686
CT	New Haven Harbor	NHB1	379	76	12,994	378	378	13,092
CT	Norwalk Harbor	1	149	30	5,111	149	149	5,150
CT	Norwalk Harbor	2	158	32	5,426	158	158	5,467
DE	Edge Moor	3	103	21	3,537	103	103	3,564
DE	Edge Moor	4	183	37	6,258	182	182	6,307
DE	Edge Moor	5	187	37	6,426	187	187	6,473
DE	Hay Road	**3	5	1	157	5	5	158
DE	Indian River	1	87	17	2,981	87	87	3,002
DE	Indian River	2	92	18	3,164	92	92	3,188
DE	Indian River	3	158	32	5,409	157	158	5,451
DE	Indian River	4	389	78	13,336	388	388	13,438
DE	McKee Run	3	54	11	2,574	53	53	1,850
DE	Van Sant	**11	4	1	137	4	4	138
DC	Benning	15	15	3	514	15	15	518
DC	Benning	16	25	5	851	25	25	857
FL	Anclote	1	298	60	12,965	297	298	10,297
FL	Anclote	2	315	63	12,890	314	315	10,894
FL	Arvah B Hopkins	1	1	0	81	1	2	85
FL	Arvah B Hopkins	2	160	32	5,492	160	160	5,532
FL	Avon Park	2	14	3	492	14	14	495
FL	Big Bend	BB01	352	70	12,066	351	351	12,156
FL	Big Bend	BB02	354	71	12,129	353	353	12,221
FL	Big Bend	BB03	332	66	11,382	331	331	11,468
FL	Big Bend	BB04	255	51	8,732	254	254	8,799
FL	C D McIntosh Jr	1	26	5	902	26	26	908
FL	C D McIntosh Jr	2	30	6	1,023	30	30	1,031
FL	C D McIntosh Jr	3	288	58	9,873	287	288	9,948

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
FL	Cape Canaveral	PCC1	123	25	4,200	122	122	4,232
FL	Cape Canaveral	PCC2	144	29	4,934	143	144	4,969
FL	Combined Cycle 1	32432	2	0	60	2	2	60
FL	Crist	1	1	0	35	1	1	35
FL	Crist	2	0	0	3	0	0	3
FL	Crist	3	0	0	4	0	0	4
FL	Crist	4	72	14	2,454	71	71	2,473
FL	Crist	5	70	14	2,417	70	70	2,435
FL	Crist	6	244	49	8,350	243	243	8,413
FL	Crist	7	363	73	12,453	362	363	12,545
FL	Crystal River	1	360	72	12,357	359	360	12,449
FL	Crystal River	2	415	83	14,212	413	414	14,320
FL	Crystal River	4	686	137	23,522	684	686	23,697
FL	Crystal River	5	734	147	25,110	732	732	25,301
FL	CT	**1	0	0	0	0	0	0
FL	CT	**2	0	0	0	0	0	0
FL	CT	**3	0	0	0	0	0	0
FL	CT	**4	0	0	0	0	0	0
FL	Cutler	PCU5	0	0	0	0	0	4
FL	Cutler	PCU6	0	0	0	0	0	9
FL	Debary	**7	20	4	701	20	20	706
FL	Debary	**8	20	4	701	20	20	706
FL	Debary	**9	20	4	701	20	20	706
FL	Debary	**10	20	4	701	20	20	706
FL	Deerhaven	B1	1	0	98	1	3	114
FL	Deerhaven	B2	240	48	8,223	239	239	8,286
FL	Deerhaven	CT3	0	0	0	0	0	0
FL	Deerhaven	**NA2	0	0	0	0	0	0
FL	F J Gannon	GB01	97	19	3,824	97	97	3,358
FL	F J Gannon	GB02	120	24	4,402	120	120	4,148
FL	F J Gannon	GB03	164	33	5,633	164	164	5,675
FL	F J Gannon	GB04	179	36	6,189	179	179	6,185
FL	F J Gannon	GB05	190	38	6,501	189	189	6,551
FL	F J Gannon	GB06	292	58	10,026	292	292	10,101
FL	Fort Myers	PFM1	93	19	3,170	92	92	3,194
FL	Fort Myers	PFM2	274	55	9,405	273	274	9,475
FL	G E Turner	2	2	0	543	2	2	82
FL	G E Turner	3	21	4	714	21	21	720
FL	G E Turner	4	18	4	607	18	18	611
FL	Henry D King	7	2	0	63	2	2	65
FL	Henry D King	8	0	0	26	0	1	34
FL	Higgins	1	12	2	421	12	12	423
FL	Higgins	2	14	3	472	14	14	475
FL	Higgins	3	13	3	966	13	13	434
FL	Hookers Point	HB01	4	0	177	4	4	177
FL	Hookers Point	HB02	5	0	207	5	5	205

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
FL	Hookers Point	HB03	13	4	465	13	13	468
FL	Hookers Point	HB04	20	4	697	20	20	702
FL	Hookers Point	HB05	36	8	1,245	36	36	1,252
FL	Hookers Point	HB06	14	3	475	14	14	478
FL	Indian River	**C	0	0	0	0	0	0
FL	Indian River	**D	19	4	635	18	18	640
FL	Indian River	1	35	7	1,185	34	34	1,194
FL	Indian River	2	46	9	1,560	45	45	1,572
FL	Indian River	3	106	21	3,626	105	106	3,652
FL	Intercession City	**7	20	4	701	20	20	706
FL	Intercession City	**8	20	4	701	20	20	706
FL	Intercession City	**9	20	4	701	20	20	706
FL	Intercession City	**10	20	4	701	20	20	706
FL	J D Kennedy	8	6	1	195	6	6	196
FL	J D Kennedy	9	16	3	550	16	16	553
FL	J D Kennedy	10	57	11	1,965	57	57	1,980
FL	J R Kelly	JRK8	1	0	58	1	2	67
FL	Lansing Smith	1	188	38	6,440	187	188	6,489
FL	Lansing Smith	2	221	44	7,559	220	220	7,616
FL	Larsen Memorial	7	9	2	305	9	9	308
FL	Larsen Memorial	**8	19	4	661	19	19	666
FL	Larsen Memorial	**9	0	0	0	0	0	0
FL	Lauderdale	4GT1	28	6	942	27	27	950
FL	Lauderdale	4GT2	28	6	942	27	27	950
FL	Lauderdale	5GT1	28	6	942	27	27	950
FL	Lauderdale	5GT2	28	6	942	27	27	950
FL	Manatee	PMT1	400	80	13,697	398	399	13,799
FL	Manatee	PMT2	368	74	12,627	367	368	12,716
FL	Martin	HRSG3A	37	7	1,268	37	37	1,277
FL	Martin	HRSG3B	37	7	1,268	37	37	1,277
FL	Martin	HRSG4A	37	7	1,268	37	37	1,277
FL	Martin	HRSG4B	37	7	1,268	37	37	1,277
FL	Martin	PMR1	148	30	5,064	147	147	5,102
FL	Martin	PMR2	175	35	6,006	175	175	6,049
FL	NA 1 -- 7238	**1	0	0	0	0	0	0
FL	Northside	1	142	28	6,196	141	142	4,897
FL	Northside	2	30	6	6,262	30	30	1,048
FL	Northside	3	193	39	11,087	192	192	6,658
FL	P L Bartow	1	71	14	2,792	71	71	2,455
FL	P L Bartow	2	70	14	2,948	70	70	2,431
FL	P L Bartow	3	157	31	5,399	157	157	5,439
FL	Port Everglades	PPE1	68	14	2,326	68	68	2,343
FL	Port Everglades	PPE2	70	14	2,400	70	70	2,417
FL	Port Everglades	PPE3	171	34	5,848	170	170	5,891
FL	Port Everglades	PPE4	173	35	5,929	172	173	5,973
FL	Putnam	HRSG11	48	10	1,634	48	48	1,647

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
FL	Putnam	HRSG12	48	10	1,634	48	48	1,647
FL	Putnam	HRSG21	45	9	1,559	45	45	1,570
FL	Putnam	HRSG22	45	9	1,559	45	45	1,570
FL	Riviera	PRV2	3	1	93	3	3	94
FL	Riviera	PRV3	104	21	3,553	103	103	3,580
FL	Riviera	PRV4	103	21	3,525	102	103	3,551
FL	S O Purdom	7	13	3	440	13	13	444
FL	Sanford	PSN3	31	6	1,079	31	31	1,087
FL	Sanford	PSN4	96	19	8,596	96	96	3,323
FL	Sanford	PSN5	93	19	3,203	93	93	3,220
FL	Scholz	1	57	11	1,948	57	57	1,963
FL	Scholz	2	59	12	2,039	59	59	2,054
FL	Seminole	1	533	107	18,281	532	532	18,420
FL	Seminole	2	533	107	18,281	532	532	18,420
FL	Southside	1	27	5	925	27	27	932
FL	Southside	2	28	6	957	28	28	964
FL	Southside	3	7	1	226	7	7	227
FL	Southside	4	18	4	612	18	18	617
FL	Southside	5	53	11	1,800	52	52	1,815
FL	St Johns River Power	1	336	67	11,519	335	335	11,605
FL	St Johns River Power	2	330	66	11,308	329	329	11,395
FL	Stanton Energy	1	328	66	11,228	327	327	11,314
FL	Stanton Energy	2	0	0	0	0	0	0
FL	Stock Island	1	75	15	2,557	74	74	2,578
FL	Stock Island D 1	**NA1	3	1	99	3	3	100
FL	Stock Island D 2	**NA2	3	1	99	3	3	100
FL	Suwannee RIver	1	7	1	253	7	7	255
FL	Suwannee RIver	2	7	1	252	7	7	253
FL	Suwannee RIver	3	19	4	645	19	19	649
FL	Tom G Smith	S-3	0	0	9	0	0	11
FL	Tom G Smith	S-4	2	0	80	2	2	80
FL	Turkey Point	PTP1	170	34	5,836	170	170	5,879
FL	Turkey Point	PTP2	172	34	5,879	171	171	5,924
FL	Vero Beach Municipal	3	9	2	313	9	9	316
FL	Vero Beach Municipal	4	2	0	107	2	3	116
FL	Vero Beach Municipal	**5	9	2	315	9	9	318
GA	Arkwright	1	37	7	1,442	37	37	1,291
GA	Arkwright	2	39	8	1,462	39	39	1,354
GA	Arkwright	3	45	9	1,530	45	45	1,542
GA	Arkwright	4	36	7	1,248	36	36	1,257
GA	Atkinson	A1A	0	0	2	0	0	2
GA	Atkinson	A1B	0	0	2	0	0	2
GA	Atkinson	A2	0	0	4	0	0	4
GA	Atkinson	A3	0	0	6	0	0	5
GA	Atkinson	A4	0	0	5	0	0	5
GA	Bowen	1BLR	667	133	23,484	665	667	23,656

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
GA	Bowen	2BLR	686	137	24,151	684	686	24,329
GA	Bowen	3BLR	875	176	30,766	873	874	30,994
GA	Bowen	4BLR	875	175	30,759	873	873	30,987
GA	Hammond	1	107	21	3,765	107	107	3,793
GA	Hammond	2	112	22	3,953	112	112	3,981
GA	Hammond	3	109	22	3,820	108	108	3,850
GA	Hammond	4	459	92	16,140	457	458	16,260
GA	Harllee Branch	1	286	57	9,802	285	285	9,876
GA	Harllee Branch	2	338	68	11,593	337	338	11,681
GA	Harllee Branch	3	465	93	15,951	464	464	16,072
GA	Harllee Branch	4	462	92	15,829	461	461	15,949
GA	Jack McDonough	MB1	243	49	8,535	242	242	8,599
GA	Jack McDonough	MB2	251	50	8,835	250	251	8,900
GA	Kraft	1	44	9	1,521	44	44	1,533
GA	Kraft	2	42	8	1,502	42	42	1,466
GA	Kraft	3	86	17	2,947	86	86	2,968
GA	Kraft	4	13	3	433	13	13	437
GA	McIntosh	1	161	32	5,524	161	161	5,565
GA	McManus	1	3	1	843	3	3	89
GA	McManus	2	6	1	1,278	6	6	198
GA	Mitchell	3	158	32	5,431	158	158	5,472
GA	Riverside	12	0	0	5	0	0	5
GA	Scherer	1	611	122	20,961	610	610	21,121
GA	Scherer	2	616	123	21,109	614	615	21,270
GA	Scherer	3	617	123	21,143	615	616	21,304
GA	Scherer	4	616	123	21,119	614	615	21,280
GA	Wansley	1	863	172	30,345	861	862	30,567
GA	Wansley	2	798	159	28,052	796	797	28,259
GA	Yates	Y1BR	88	18	3,089	88	88	3,113
GA	Yates	Y2BR	86	17	3,019	86	86	3,041
GA	Yates	Y3BR	85	17	2,981	84	85	3,003
GA	Yates	Y4BR	109	22	3,821	108	108	3,851
GA	Yates	Y5BR	115	23	4,033	114	114	4,063
GA	Yates	Y6BR	302	60	10,618	301	301	10,696
GA	Yates	Y7BR	297	59	10,443	296	296	10,521
IL	Baldwin	1	512	102	18,014	510	511	18,146
IL	Baldwin	2	541	108	19,046	540	540	19,186
IL	Baldwin	3	518	104	18,246	517	518	18,380
IL	Coffeen	01	144	29	5,056	143	143	5,094
IL	Coffeen	02	434	87	15,294	433	434	15,406
IL	Collins	1	38	8	1,319	38	38	1,329
IL	Collins	2	33	7	1,126	33	33	1,135
IL	Collins	3	58	12	1,989	58	58	2,004
IL	Collins	4	47	9	1,624	47	47	1,636
IL	Collins	5	52	10	1,800	52	52	1,812
IL	Crawford	7	105	21	7,215	104	105	3,617

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
IL	Crawford	8	162	32	9,818	162	162	5,602
IL	Dallman	31	40	8	1,377	40	40	1,388
IL	Dallman	32	45	9	1,559	45	45	1,570
IL	Dallman	33	151	30	5,169	150	151	5,208
IL	Duck Creek	1	325	65	11,136	324	324	11,220
IL	E D Edwards	1	70	14	2,885	70	70	2,414
IL	E D Edwards	2	196	39	6,877	195	195	6,760
IL	E D Edwards	3	251	50	9,075	250	250	8,663
IL	Fisk	19	104	21	10,011	104	104	3,602
IL	Grand Tower	07	7	1	247	7	7	248
IL	Grand Tower	08	7	1	234	7	7	236
IL	Grand Tower	09	72	14	2,533	72	72	2,551
IL	Havana	1	0	0	35	0	0	35
IL	Havana	2	0	0	45	0	0	45
IL	Havana	3	0	0	35	0	0	35
IL	Havana	4	0	0	35	0	0	35
IL	Havana	5	0	0	35	0	0	35
IL	Havana	6	0	0	35	0	0	35
IL	Havana	7	0	0	35	0	0	35
IL	Havana	8	0	0	35	0	0	35
IL	Havana	9	195	39	8,766	194	195	6,731
IL	Hennepin	1	59	12	2,006	58	58	2,023
IL	Hennepin	2	224	45	7,895	224	224	7,953
IL	Hutsonville	05	64	13	2,210	64	64	2,227
IL	Hutsonville	06	67	13	2,289	67	67	2,306
IL	Joliet 29	71	169	34	7,546	169	169	5,837
IL	Joliet 29	72	138	28	6,149	137	138	4,757
IL	Joliet 29	81	158	32	7,264	158	158	5,471
IL	Joliet 29	82	164	33	7,525	164	164	5,668
IL	Joliet 9	5	170	34	8,642	170	170	5,886
IL	Joppa Steam	1	153	31	5,257	153	153	5,297
IL	Joppa Steam	2	131	26	4,497	131	131	4,530
IL	Joppa Steam	3	149	30	5,123	149	149	5,162
IL	Joppa Steam	4	138	28	4,745	138	138	4,781
IL	Joppa Steam	5	139	28	4,767	139	139	4,803
IL	Joppa Steam	6	129	26	4,434	129	129	4,467
IL	Kincaid	1	384	77	13,519	383	383	13,620
IL	Kincaid	2	423	85	14,897	422	423	15,006
IL	Lakeside	7	74	15	2,539	74	18	633
IL	Lakeside	8	42	8	1,438	42	9	326
IL	Marion	1	60	12	2,068	60	14	468
IL	Marion	2	62	12	2,118	62	14	479
IL	Marion	3	67	13	2,297	67	15	520
IL	Marion	4	198	40	6,801	198	198	6,853
IL	Meredosia	01	9	2	296	9	9	299
IL	Meredosia	02	9	2	320	9	9	322

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
IL	Meredosia	03	8	2	278	8	8	281
IL	Meredosia	04	7	1	254	7	7	255
IL	Meredosia	05	169	34	5,957	169	169	6,000
IL	Meredosia	06	1	0	46	1	1	46
IL	Newton	1	453	91	15,534	452	452	15,652
IL	Newton	2	404	81	13,851	403	403	13,956
IL	Powerton	51	244	49	10,655	244	244	8,443
IL	Powerton	52	241	48	10,526	241	241	8,341
IL	Powerton	61	248	50	10,466	248	248	8,580
IL	Powerton	62	250	50	10,549	250	250	8,647
IL	R S Wallace	9	2	0	901	2	2	61
IL	R S Wallace	10	5	1	2,431	5	5	177
IL	Venice	1	0	0	5	0	0	5
IL	Venice	2	0	0	2	0	0	2
IL	Venice	3	0	0	17	0	0	17
IL	Venice	4	0	0	14	0	0	14
IL	Venice	5	0	0	10	0	0	10
IL	Venice	6	0	0	10	0	0	10
IL	Venice	7	0	0	2	0	0	2
IL	Venice	8	0	0	2	0	0	2
IL	Vermilion	1	82	16	2,819	82	82	2,840
IL	Vermilion	2	108	22	3,809	108	108	3,837
IL	Waukegan	7	183	37	8,177	182	183	6,314
IL	Waukegan	8	145	29	7,811	145	145	5,005
IL	Waukegan	17	43	9	3,095	43	43	1,501
IL	Will County	1	74	15	5,307	74	74	2,554
IL	Will County	2	73	15	4,835	72	72	2,505
IL	Will County	3	150	30	6,965	150	150	5,197
IL	Will County	4	264	53	13,751	264	264	9,133
IL	Wood River	1	0	0	3	0	0	3
IL	Wood River	2	0	0	3	0	0	3
IL	Wood River	3	0	0	3	0	0	3
IL	Wood River	4	51	10	2,249	51	51	1,761
IL	Wood River	5	275	55	9,426	274	274	9,498
IN	A B Brown	1	155	31	5,327	155	155	5,368
IN	A B Brown	2	131	26	4,504	131	131	4,538
IN	A B Brown	**4	19	4	635	18	18	640
IN	Bailly	7	136	27	4,785	136	136	4,819
IN	Bailly	8	194	39	6,832	194	194	6,882
IN	Breed	1	225	45	7,932	225	225	7,990
IN	Cayuga	1	407	81	14,309	405	406	14,415
IN	Cayuga	2	416	83	14,632	415	415	14,740
IN	Cayuga	4	0	0	0	0	0	0
IN	Cayuga	5	0	0	0	0	0	0
IN	Cayuga	6	0	0	0	0	0	0
IN	Clifty Creek	1	246	49	8,416	245	245	8,480

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
IN	Clifty Creek	2	241	48	8,276	241	241	8,338
IN	Clifty Creek	3	249	50	8,523	248	248	8,589
IN	Clifty Creek	4	245	49	8,385	244	244	8,449
IN	Clifty Creek	5	236	47	8,085	235	235	8,146
IN	Clifty Creek	6	248	50	8,510	248	248	8,574
IN	Dean H Mitchell	4	43	9	3,107	43	43	1,473
IN	Dean H Mitchell	5	54	11	3,007	54	54	1,860
IN	Dean H Mitchell	6	48	10	2,960	48	48	1,672
IN	Dean H Mitchell	11	35	7	2,651	35	35	1,225
IN	Edwardsport	6-1	0	0	0	0	0	0
IN	Edwardsport	7-1	10	2	345	10	10	348
IN	Edwardsport	7-2	10	2	352	10	10	355
IN	Edwardsport	8-1	11	2	373	11	11	375
IN	Elmer W Stout	1	0	0	0	0	0	0
IN	Elmer W Stout	2	0	0	0	0	0	0
IN	Elmer W Stout	3	0	0	0	0	0	0
IN	Elmer W Stout	4	0	0	0	0	0	0
IN	Elmer W Stout	5	0	0	0	0	0	0
IN	Elmer W Stout	6	0	0	0	0	0	0
IN	Elmer W Stout	7	0	0	0	0	0	0
IN	Elmer W Stout	8	0	0	0	0	0	0
IN	Elmer W Stout	9	0	0	1	0	0	1
IN	Elmer W Stout	10	0	0	2	0	0	2
IN	Elmer W Stout	50	47	9	1,665	47	47	1,677
IN	Elmer W Stout	60	58	12	2,046	58	58	2,061
IN	Elmer W Stout	70	288	58	10,122	287	287	10,198
IN	F B Culley	1	24	5	822	24	24	828
IN	F B Culley	2	50	10	1,749	50	50	1,762
IN	F B Culley	3	207	41	7,277	206	206	7,332
IN	Frank E Ratts	1SG1	102	20	3,573	101	101	3,600
IN	Frank E Ratts	2SG1	103	21	3,639	103	103	3,666
IN	Gibson	1	492	98	17,322	491	491	17,449
IN	Gibson	2	500	100	17,583	498	499	17,713
IN	Gibson	3	500	100	17,614	499	500	17,743
IN	Gibson	4	491	98	17,291	490	490	17,419
IN	Gibson	5	527	105	18,082	526	527	18,217
IN	H T Pritchard	1	0	0	0	0	0	0
IN	H T Pritchard	2	0	0	1	0	0	1
IN	H T Pritchard	3	7	1	239	7	7	240
IN	H T Pritchard	4	15	3	530	15	15	534
IN	H T Pritchard	5	17	3	593	17	17	597
IN	H T Pritchard	6	70	14	2,474	70	70	2,492
IN	Merom	1SG1	433	87	14,838	432	432	14,951
IN	Merom	2SG1	430	86	14,737	429	429	14,850
IN	Michigan City	4	26	5	904	26	26	912
IN	Michigan City	5	29	6	1,004	29	29	1,012

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
IN	Michigan City	6	30	6	1,013	30	30	1,021
IN	Michigan City	12	284	57	9,995	283	283	10,069
IN	NA 1 -- 7221	**1	0	0	0	0	0	0
IN	NA 1 -- 7221	**3	0	0	0	0	0	0
IN	NA 1 -- 7221	**4	0	0	0	0	0	0
IN	Noblesville	1	2	0	66	2	2	66
IN	Noblesville	2	2	0	54	2	2	54
IN	Noblesville	3	1	0	40	1	1	40
IN	Petersburg	1	200	40	7,048	200	200	7,100
IN	Petersburg	2	395	79	13,886	393	394	13,988
IN	Petersburg	3	490	98	16,788	488	489	16,916
IN	Petersburg	4	469	94	16,061	467	468	16,183
IN	R Gallagher	1	82	16	2,893	82	82	2,914
IN	R Gallagher	2	89	18	3,120	88	89	3,144
IN	R Gallagher	3	80	16	2,799	79	79	2,821
IN	R Gallagher	4	83	17	2,916	83	83	2,938
IN	R M Schahfer	14	141	28	10,329	141	141	4,868
IN	R M Schahfer	15	129	26	10,667	129	129	4,461
IN	R M Schahfer	17	151	30	5,194	151	151	5,233
IN	R M Schahfer	18	151	30	5,159	150	150	5,199
IN	Rockport	MB1	958	192	32,811	956	957	33,061
IN	Rockport	MB2	958	192	32,811	956	957	33,061
IN	State Line	3	100	20	4,706	100	100	3,452
IN	State Line	4	175	35	6,889	174	174	6,033
IN	Tanners Creek	U1	59	12	2,764	59	59	2,037
IN	Tanners Creek	U2	62	12	2,786	62	62	2,138
IN	Tanners Creek	U3	66	13	4,067	66	66	2,287
IN	Tanners Creek	U4	302	60	10,645	302	302	10,722
IN	Wabash River	1	49	10	1,713	49	49	1,726
IN	Wabash River	2	39	8	1,384	39	39	1,394
IN	Wabash River	3	46	9	1,607	46	46	1,619
IN	Wabash River	4	44	9	1,523	44	44	1,534
IN	Wabash River	5	45	9	1,573	45	45	1,584
IN	Wabash River	6	150	30	5,265	149	149	5,304
IN	Warrick	4	297	59	10,450	296	296	10,527
IN	Whitewater Valley	1	65	13	2,224	65	65	2,241
IN	Whitewater Valley	2	194	39	6,656	194	194	6,706
IA	Ames	7	12	2	401	12	12	403
IA	Ames	8	53	11	1,823	53	53	1,837
IA	Burlington	1	130	26	4,473	130	130	4,507
IA	Council Bluffs	1	19	4	1,106	19	19	653
IA	Council Bluffs	2	27	5	1,646	27	27	928
IA	Council Bluffs	3	463	93	15,863	462	462	15,985
IA	Des Moines	**5	0	0	0	0	0	0
IA	Des Moines	10	5	1	162	5	5	164
IA	Des Moines	11	7	1	243	7	7	245

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
IA	Dubuque	1	32	6	1,114	32	32	1,122
IA	Dubuque	5	9	2	303	9	9	306
IA	Earl F Wisdom	1	11	2	377	11	11	380
IA	Fair Station	2	162	32	5,543	161	161	5,585
IA	George Neal North	1	67	13	2,297	67	67	2,314
IA	George Neal North	2	128	26	9,056	127	127	4,405
IA	George Neal North	3	248	50	12,246	247	247	8,556
IA	George Neal South	4	439	88	15,056	438	438	15,171
IA	Graettinger	2	0	0	10	0	0	10
IA	Grinnell	**2	6	1	188	6	6	190
IA	Lansing	3	14	3	475	14	14	479
IA	Lansing	4	126	25	4,604	125	126	4,344
IA	Lime Creek	**1	7	1	254	7	7	255
IA	Lime Creek	**2	7	1	254	7	7	255
IA	Louisa	101	452	90	15,503	451	451	15,620
IA	Maynard Station	1	1	0	31	1	1	31
IA	Milton L Kapp	2	168	34	5,761	168	168	5,805
IA	Muscatine	8	39	8	1,354	39	39	1,364
IA	Muscatine	9	59	12	2,015	59	59	2,030
IA	NA 1 -- 7230	**2	0	0	0	0	0	0
IA	Ottumwa	1	554	111	18,984	552	553	19,127
IA	Pella	6	22	4	753	22	22	758
IA	Pella	7	28	6	972	28	28	979
IA	Pella	8	1	0	68	1	1	27
IA	Prairie Creek	3	21	4	721	21	21	727
IA	Prairie Creek	4	100	20	3,414	99	99	3,440
IA	Riverside	9	51	10	1,735	50	51	1,748
IA	Sixth Street	1	24	6	808	24	24	815
IA	Sixth Street	2	6	0	177	6	6	177
IA	Sixth Street	3	6	0	154	6	6	154
IA	Sixth Street	4	1	0	77	1	1	77
IA	Sixth Street	5	10	1	307	10	10	308
IA	Streeter Station	7	16	3	551	16	16	555
IA	Sutherland	1	6	1	198	6	6	200
IA	Sutherland	2	11	2	374	11	11	376
IA	Sutherland	3	64	13	2,178	63	63	2,196
KS	Arthur Mullergreen	3	0	0	1	0	0	1
KS	Cimarron River	1	0	0	12	0	0	11
KS	Coffeyville	4	0	0	11	0	0	10
KS	East 12th Street	4	0	0	10	0	0	8
KS	Garden City	S-2	0	0	0	0	0	0
KS	Gordon Evans	1	0	0	64	0	2	56
KS	Gordon Evans	2	0	0	25	0	1	21
KS	Holcomb	SGU1	116	23	3,988	116	116	4,018
KS	Hutchinson	1	0	0	0	0	0	0
KS	Hutchinson	2	0	0	0	0	0	0

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
KS	Hutchinson	3	0	0	0	0	0	0
KS	Hutchinson	4	0	0	18	0	0	16
KS	Jeffrey Energy Centr	1	496	99	17,014	495	495	17,143
KS	Jeffrey Energy Centr	2	525	105	17,982	523	524	18,118
KS	Jeffrey Energy Centr	3	598	120	20,515	597	597	20,672
KS	Judson Large	4	0	0	39	0	1	34
KS	Kaw	1	23	5	782	23	23	789
KS	Kaw	2	18	4	615	18	18	620
KS	Kaw	3	15	3	513	15	15	517
KS	Kingman	**9	1	0	51	1	1	51
KS	La Cygne	1	417	83	17,863	416	416	14,405
KS	La Cygne	2	437	87	14,974	436	436	15,087
KS	Lawrence	2	0	0	2	0	0	2
KS	Lawrence	3	18	4	2,144	18	18	625
KS	Lawrence	4	27	5	1,814	27	27	948
KS	Lawrence	5	109	22	5,355	108	108	3,752
KS	McPherson 2	1	0	0	1	0	0	1
KS	Mulvane	**7	0	0	5	0	0	5
KS	Mulvane	**8	0	0	5	0	0	5
KS	Murray Gill	1	0	0	1	0	0	1
KS	Murray Gill	2	0	0	5	0	0	5
KS	Murray Gill	3	0	0	50	0	1	44
KS	Murray Gill	4	0	0	62	0	2	54
KS	Nearman Creek	N1	201	40	6,890	200	201	6,942
KS	Neosho	7	0	0	13	0	0	13
KS	Quindaro	1	59	12	2,020	59	59	2,035
KS	Quindaro	2	60	12	2,067	60	60	2,082
KS	Riverton	39	30	6	1,033	30	30	1,041
KS	Riverton	40	51	10	1,754	51	51	1,766
KS	Russell	**11	1	0	31	1	1	31
KS	Russell	**12	1	0	30	1	1	30
KS	Tecumseh	9	27	5	2,251	27	27	921
KS	Tecumseh	10	43	9	3,907	42	43	1,470
KS	Wamego	7	0	0	0	0	0	0
KY	Big Sandy	BSU1	186	37	6,393	186	186	6,441
KY	Big Sandy	BSU2	538	108	19,610	537	537	18,584
KY	Cane Run	3	1	0	39	1	1	39
KY	Cane Run	4	79	16	4,506	79	79	2,726
KY	Cane Run	5	125	25	4,316	125	125	4,330
KY	Cane Run	6	157	31	5,469	157	157	5,436
KY	Cane Run	**12	0	0	0	0	0	0
KY	Cane Run	**13	0	0	0	0	0	0
KY	Coleman	C1	137	27	4,827	137	137	4,862
KY	Coleman	C2	156	31	5,505	156	156	5,545
KY	Coleman	C3	150	30	5,294	150	150	5,332
KY	Cooper	1	91	18	3,192	90	91	3,216

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
KY	Cooper	2	187	37	6,571	186	186	6,619
KY	D B Wilson	W1	362	72	12,393	361	361	12,487
KY	Dale	3	49	10	1,974	49	49	1,693
KY	Dale	4	41	8	1,839	40	40	1,400
KY	E W Brown	1	87	17	3,049	86	86	3,071
KY	E W Brown	2	164	33	5,774	164	164	5,817
KY	E W Brown	3	318	64	11,190	317	317	11,273
KY	East Bend	2	531	106	18,216	530	530	18,354
KY	Elmer Smith	1	79	16	2,789	79	79	2,810
KY	Elmer Smith	2	176	35	6,178	175	175	6,224
KY	Ghent	1	346	69	12,183	345	346	12,272
KY	Ghent	2	291	58	12,679	290	290	10,038
KY	Ghent	3	405	81	13,879	404	404	13,985
KY	Ghent	4	398	80	13,637	397	397	13,742
KY	Green River	1	0	0	130	0	0	2
KY	Green River	2	0	0	851	0	0	16
KY	Green River	3	0	0	744	0	0	13
KY	Green River	4	82	16	2,810	82	82	2,830
KY	Green River	5	95	19	3,353	95	95	3,377
KY	H L Spurlock	1	278	56	9,768	277	277	9,841
KY	H L Spurlock	2	481	96	16,495	480	480	16,621
KY	Henderson 1	6	24	5	805	23	23	812
KY	HMP&L Station 2	H1	163	33	5,725	162	162	5,769
KY	HMP&L Station 2	H2	168	34	5,902	167	167	5,946
KY	Mill Creek	1	223	45	8,037	222	222	7,696
KY	Mill Creek	2	227	45	8,097	227	227	7,855
KY	Mill Creek	3	319	64	10,918	318	318	11,001
KY	Mill Creek	4	395	79	13,543	394	394	13,645
KY	NA 1 -- 7220	**3	0	0	0	0	0	0
KY	NA 1 -- 7220	**4	0	0	0	0	0	0
KY	NA 1 -- 7220	**5	0	0	0	0	0	0
KY	Paradise	1	314	63	10,758	313	313	10,841
KY	Paradise	2	357	71	12,233	356	356	12,326
KY	Paradise	3	722	144	25,369	720	721	25,556
KY	Pineville	3	12	2	912	12	12	424
KY	R D Green	G1	154	31	5,263	153	153	5,303
KY	R D Green	G2	185	37	6,341	184	185	6,389
KY	Robert Reid	R1	27	5	937	27	27	944
KY	Shawnee	1	76	15	3,629	76	76	2,622
KY	Shawnee	2	78	16	3,657	78	78	2,702
KY	Shawnee	3	88	18	3,690	88	88	3,043
KY	Shawnee	4	88	18	3,576	87	87	3,025
KY	Shawnee	5	86	17	3,809	85	85	2,954
KY	Shawnee	6	94	19	3,693	94	94	3,242
KY	Shawnee	7	104	21	3,619	103	104	3,581
KY	Shawnee	8	99	20	3,551	99	99	3,427

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
KY	Shawnee	9	106	21	3,645	106	106	3,672
KY	Shawnee	10	138	28	4,867	138	138	4,903
KY	Trimble County	1	279	56	9,578	279	279	9,651
KY	Tyrone	1	0	0	0	0	0	0
KY	Tyrone	2	0	0	0	0	0	0
KY	Tyrone	3	0	0	0	0	0	0
KY	Tyrone	4	0	0	0	0	0	0
KY	Tyrone	5	20	4	1,709	20	20	675
LA	A B Paterson	3	0	0	7	0	0	4
LA	A B Paterson	4	0	0	8	0	0	6
LA	Arsenal Hill	5A	0	0	30	0	1	18
LA	Big Cajun 1	1B1	0	0	27	0	1	37
LA	Big Cajun 1	1B2	0	0	27	0	1	34
LA	Big Cajun 2	2B1	415	83	14,785	414	414	14,322
LA	Big Cajun 2	2B2	409	82	14,558	408	409	14,142
LA	Big Cajun 2	2B3	408	82	14,575	407	408	14,106
LA	Coughlin	6	0	0	46	0	1	34
LA	Coughlin	7	0	0	128	0	4	139
LA	D G Hunter	3	0	0	0	0	0	9
LA	D G Hunter	4	0	0	32	0	1	24
LA	Doc Bonin	1	0	0	12	0	0	17
LA	Doc Bonin	2	0	0	24	0	1	30
LA	Doc Bonin	3	0	0	45	0	3	89
LA	Dolet Hills	1	595	119	20,382	593	595	20,535
LA	Houma	15	0	0	10	0	0	14
LA	Houma	16	0	0	14	0	1	28
LA	Lieberman	3	0	0	86	0	2	85
LA	Lieberman	4	0	0	72	0	2	63
LA	Little Gypsy	1	1	0	245	1	6	223
LA	Little Gypsy	2	2	0	378	2	10	351
LA	Little Gypsy	3	3	1	542	3	14	473
LA	Louisiana 1	1A	0	0	116	0	0	17
LA	Louisiana 1	2A	0	0	2	0	0	17
LA	Louisiana 1	3A	0	0	2	0	0	17
LA	Louisiana 2	10	0	0	0	0	0	0
LA	Louisiana 2	11	0	0	0	0	0	0
LA	Louisiana 2	12	0	0	0	0	0	0
LA	Michoud	1	0	0	71	0	2	83
LA	Michoud	2	0	0	106	0	4	138
LA	Michoud	3	1	0	491	1	13	467
LA	Monroe	11	0	0	13	0	0	12
LA	Monroe	12	0	0	45	0	1	38
LA	Morgan City	4	0	0	5	0	0	5
LA	Natchitoches	10	0	0	0	0	0	0
LA	Ninemile Point	1	1	0	62	1	2	65
LA	Ninemile Point	2	1	0	112	1	3	103

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
LA	Ninemile Point	3	1	0	96	1	3	86
LA	Ninemile Point	4	3	1	690	3	18	611
LA	Ninemile Point	5	4	1	929	4	23	811
LA	Opelousas	10	0	0	1	0	0	1
LA	R S Nelson	3	0	0	39	0	1	26
LA	R S Nelson	4	0	0	123	0	8	279
LA	R S Nelson	6	541	108	19,461	540	540	18,701
LA	Rodemacher	1	86	17	3,232	86	86	2,975
LA	Rodemacher	2	527	105	18,804	526	526	18,212
LA	Ruston	2	0	0	4	0	0	6
LA	Ruston	3	0	0	5	0	1	22
LA	Sterlington	10	1	0	174	1	5	156
LA	Sterlington	7AB	0	0	72	0	2	72
LA	Teche	2	0	0	27	0	1	22
LA	Teche	3	0	0	446	0	11	368
LA	Waterford 1 & 2	1	124	25	4,529	123	123	4,269
LA	Waterford 1 & 2	2	96	19	3,516	96	96	3,313
LA	Willow Glen	1	0	0	99	0	3	87
LA	Willow Glen	2	0	0	26	0	1	20
LA	Willow Glen	3	0	0	93	0	1	32
LA	Willow Glen	4	0	0	291	0	9	295
LA	Willow Glen	5	1	0	458	1	13	437
ME	Graham Station	5	10	2	342	10	10	344
ME	Mason Steam	3	0	0	2	0	0	2
ME	Mason Steam	4	0	0	1	0	0	1
ME	Mason Steam	5	0	0	1	0	0	1
ME	William F Wyman	1	14	3	1,156	13	13	467
ME	William F Wyman	2	16	3	1,158	16	16	549
ME	William F Wyman	3	78	16	2,930	78	78	2,693
ME	William F Wyman	4	182	36	6,238	181	182	6,284
MD	Brandon Shores	1	537	107	18,403	535	536	18,542
MD	Brandon Shores	2	226	45	7,750	225	226	7,808
MD	C P Crane	1	126	25	4,324	126	126	4,356
MD	C P Crane	2	117	23	4,020	117	117	4,049
MD	Chalk Point	**GT3	21	4	703	20	20	709
MD	Chalk Point	**GT4	21	4	703	20	20	709
MD	Chalk Point	**GT5	26	5	889	26	26	896
MD	Chalk Point	**GT6	26	5	889	26	26	896
MD	Chalk Point	1	267	53	9,149	266	266	9,218
MD	Chalk Point	2	296	59	10,160	296	296	10,236
MD	Chalk Point	3	151	30	12,473	151	151	5,229
MD	Chalk Point	4	75	15	2,585	75	75	2,605
MD	Dickerson	1	170	34	5,814	169	169	5,859
MD	Dickerson	2	160	32	5,468	159	159	5,510
MD	Dickerson	3	170	34	5,812	169	169	5,856
MD	Dickerson	CW1	0	0	0	0	0	0

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
MD	Dickerson	GT2	31	6	1,076	31	31	1,084
MD	Dickerson	GT3	31	6	1,076	31	31	1,084
MD	Dickerson	HCT3	0	0	0	0	0	0
MD	Dickerson	HCT4	0	0	0	0	0	0
MD	Easton 2	**25	0	0	0	0	0	0
MD	Easton 2	**26	0	0	0	0	0	0
MD	Easton 2	**27	0	0	0	0	0	0
MD	Gould Street	3	24	5	816	24	24	823
MD	Herbert A Wagner	1	37	7	1,284	37	37	1,293
MD	Herbert A Wagner	2	38	8	1,291	38	38	1,301
MD	Herbert A Wagner	3	243	49	8,332	242	243	8,395
MD	Herbert A Wagner	4	44	9	1,511	44	44	1,523
MD	Morgantown	1	491	98	16,834	490	490	16,962
MD	Morgantown	2	469	94	16,095	468	469	16,216
MD	Nanticoke	**ST1	0	0	0	0	0	0
MD	Perryman	**51	0	0	0	0	0	0
MD	Perryman	**52	0	0	0	0	0	0
MD	Perryman	**61	0	0	0	0	0	0
MD	Perryman	**62	0	0	0	0	0	0
MD	R P Smith	9	8	2	632	8	8	281
MD	R P Smith	11	66	13	2,301	66	66	2,272
MD	Riverside	1	5	1	188	5	5	190
MD	Riverside	2	5	1	170	5	5	172
MD	Riverside	3	10	2	352	10	10	354
MD	Riverside	4	13	3	452	13	13	456
MD	Riverside	5	9	2	292	9	9	295
MD	Vienna	8	53	11	3,634	53	53	1,819
MD	Westport	3	5	1	185	5	5	187
MD	Westport	4	8	2	256	7	7	259
MA	Brayton Point	1	246	49	8,432	245	246	8,496
MA	Brayton Point	2	258	52	8,859	258	258	8,926
MA	Brayton Point	3	540	108	18,517	539	539	18,658
MA	Brayton Point	4	336	67	12,072	336	336	11,621
MA	Canal	1	357	71	13,164	356	356	12,327
MA	Canal	2	522	104	17,895	521	521	18,031
MA	Cannon Street	3	11	2	372	11	11	374
MA	Cleary Flood	8	4	1	142	4	4	143
MA	Cleary Flood	9	46	9	2,670	46	46	1,577
MA	Kendall Square	1	5	0	199	5	5	198
MA	Kendall Square	2	6	1	207	5	5	208
MA	Kendall Square	3	12	3	418	12	12	422
MA	Mount Tom	1	163	33	5,578	162	162	5,622
MA	Mystic	4	76	15	2,592	75	75	2,612
MA	Mystic	5	90	18	3,074	89	90	3,098
MA	Mystic	6	89	18	3,058	89	89	3,081
MA	Mystic	7	500	100	17,144	499	499	17,274

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
MA	New Boston	1	179	36	6,122	178	178	6,169
MA	New Boston	2	183	37	6,287	183	183	6,335
MA	Salem Harbor	1	97	19	3,320	97	97	3,345
MA	Salem Harbor	2	99	20	3,388	99	99	3,414
MA	Salem Harbor	3	158	32	5,429	158	158	5,470
MA	Salem Harbor	4	357	71	12,500	356	357	12,346
MA	Somerset	1	0	0	0	0	0	0
MA	Somerset	2	0	0	0	0	0	0
MA	Somerset	3	0	0	0	0	0	0
MA	Somerset	4	0	0	0	0	0	0
MA	Somerset	5	0	0	0	0	0	0
MA	Somerset	6	0	0	0	0	0	0
MA	Somerset	7	80	16	2,749	80	80	2,770
MA	Somerset	8	116	23	3,962	115	115	3,993
MA	Waters Rivers	**2	7	1	246	7	7	247
MA	West Springfield	1	11	2	376	11	11	379
MA	West Springfield	2	10	2	354	10	10	356
MA	West Springfield	3	87	17	2,995	87	87	3,017
MI	B C Cobb	1	13	3	1,139	13	13	442
MI	B C Cobb	2	14	3	1,226	13	14	475
MI	B C Cobb	3	13	3	1,220	13	13	473
MI	B C Cobb	4	133	27	4,546	132	132	4,582
MI	B C Cobb	5	136	27	4,668	136	136	4,702
MI	Belle River	1	537	107	18,398	535	536	18,536
MI	Belle River	2	544	109	18,660	543	543	18,801
MI	Conners Creek	15	17	3	4,282	17	17	589
MI	Conners Creek	16	17	3	4,276	17	17	581
MI	Conners Creek	17	15	3	4,031	15	15	554
MI	Conners Creek	18	13	3	3,350	13	13	450
MI	Dan E Karn	1	227	45	7,766	226	226	7,825
MI	Dan E Karn	2	248	50	8,517	248	248	8,582
MI	Dan E Karn	3	30	6	1,014	30	30	1,023
MI	Dan E Karn	4	27	5	943	27	27	949
MI	Delray	7	0	0	0	0	0	0
MI	Delray	8	0	0	12	0	0	12
MI	Delray	9	0	0	0	0	0	0
MI	Delray	10	0	0	14	0	0	14
MI	Delray	12	0	0	14	0	0	12
MI	Eckert Station	1	34	7	1,291	34	34	1,176
MI	Eckert Station	2	35	7	1,347	35	35	1,225
MI	Eckert Station	3	32	6	1,321	32	32	1,116
MI	Eckert Station	4	64	13	2,210	64	64	2,227
MI	Eckert Station	5	77	15	2,651	77	77	2,670
MI	Eckert Station	6	68	14	2,329	68	68	2,347
MI	Endicott Generating	1	53	11	1,799	52	52	1,814
MI	Erickson	1	193	39	6,607	192	192	6,659

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
MI	Greenwood	1	16	3	536	16	16	541
MI	Harbor Beach	1	41	8	3,512	41	41	1,427
MI	J B Sims	3	43	9	1,475	43	43	1,487
MI	J C Weadock	7	138	28	4,717	137	137	4,754
MI	J C Weadock	8	136	27	4,664	136	136	4,699
MI	J H Campbell	1	235	47	8,051	234	234	8,113
MI	J H Campbell	2	281	56	9,629	280	280	9,702
MI	J H Campbell	3	798	159	27,322	796	797	27,529
MI	J R Whiting	1	99	20	3,392	99	99	3,418
MI	J R Whiting	2	101	20	3,474	101	101	3,500
MI	J R Whiting	3	130	26	4,442	129	129	4,477
MI	James De Young	5	30	6	1,042	30	30	1,050
MI	Marysville	9	16	3	1,634	16	16	560
MI	Marysville	10	13	3	1,258	13	13	432
MI	Marysville	11	13	3	1,312	13	13	450
MI	Marysville	12	11	3	1,058	11	11	363
MI	Mistersky	5	7	1	256	7	7	257
MI	Mistersky	6	13	3	434	13	13	438
MI	Mistersky	7	14	3	482	14	14	487
MI	Monroe	1	692	138	23,701	690	691	23,882
MI	Monroe	2	719	144	24,596	716	717	24,785
MI	Monroe	3	672	134	23,025	670	672	23,200
MI	Monroe	4	739	148	25,285	737	737	25,478
MI	Presque Isle	2	7	1	636	7	7	246
MI	Presque Isle	3	55	11	1,896	55	55	1,910
MI	Presque Isle	4	48	10	1,667	48	48	1,673
MI	Presque Isle	5	85	17	2,917	85	85	2,938
MI	Presque Isle	6	85	17	2,924	85	85	2,946
MI	Presque Isle	7	63	13	2,203	63	63	2,173
MI	Presque Isle	8	59	12	2,180	59	59	2,050
MI	Presque Isle	9	44	9	2,337	44	44	1,511
MI	River Rouge	1	2	0	79	2	2	79
MI	River Rouge	2	180	36	6,287	179	179	6,203
MI	River Rouge	3	264	53	9,050	263	264	9,118
MI	Shiras	3	15	3	497	14	14	502
MI	St Clair	1	106	21	3,645	106	106	3,672
MI	St Clair	2	103	21	3,522	103	103	3,549
MI	St Clair	3	102	20	3,505	102	102	3,530
MI	St Clair	4	98	20	3,376	98	98	3,402
MI	St Clair	5	0	0	0	0	0	0
MI	St Clair	6	213	43	7,299	212	213	7,355
MI	St Clair	7	390	78	13,381	389	390	13,482
MI	Trenton Channel	16	67	14	3,278	66	66	2,297
MI	Trenton Channel	17	16	4	763	16	16	534
MI	Trenton Channel	18	72	14	3,549	72	72	2,485
MI	Trenton Channel	19	14	2	696	14	14	488

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
MI	Trenton Channel	9A	421	84	14,423	420	420	14,532
MI	Wyandotte	5	15	3	957	15	15	549
MI	Wyandotte	7	15	3	950	15	15	545
MI	491 E. 48th Street	**7	9	2	296	9	9	299
MI	491 E. 48th Street	**8	9	2	296	9	9	299
MN	Allen S King	1	453	91	15,537	452	452	15,655
MN	Black Dog	1	10	2	1,912	10	10	331
MN	Black Dog	2	13	3	3,680	13	13	458
MN	Black Dog	3	29	6	2,269	29	29	989
MN	Black Dog	4	62	12	4,044	62	62	2,130
MN	Clay Boswell	1	36	7	1,820	36	36	1,248
MN	Clay Boswell	2	34	7	1,793	34	34	1,188
MN	Clay Boswell	3	286	57	9,809	285	286	9,882
MN	Clay Boswell	4	299	60	10,264	299	299	10,342
MN	Fox Lake	3	31	6	2,063	31	31	1,068
MN	High Bridge	3	23	5	2,113	23	23	795
MN	High Bridge	4	18	4	1,454	18	18	614
MN	High Bridge	5	31	6	2,188	31	31	1,087
MN	High Bridge	6	54	11	1,841	54	54	1,855
MN	Hoot Lake	2	9	2	1,240	9	9	310
MN	Hoot Lake	3	31	6	1,972	31	31	1,078
MN	M L Hibbard	3	1	0	987	1	1	30
MN	M L Hibbard	4	0	0	1,094	0	0	10
MN	Minnesota Valley	4	2	0	938	2	2	62
MN	Northeast Station	NEPP	31	6	1,046	30	30	1,055
MN	Riverside	6	7	1	3,075	7	7	227
MN	Riverside	7	3	1	1,338	3	3	90
MN	Riverside	8	109	22	5,046	109	109	3,779
MN	Sherburne County	1	380	76	13,015	379	379	13,115
MN	Sherburne County	2	382	76	13,108	381	382	13,206
MN	Sherburne County	3	376	75	12,881	375	375	12,979
MN	Silver Lake	4	91	18	3,115	91	91	3,138
MN	Syl Laskin	1	9	2	1,690	9	9	321
MN	Syl Laskin	2	4	1	1,648	4	4	139
MS	Baxter Wilson	1	1	0	360	1	9	321
MS	Baxter Wilson	2	103	21	3,543	103	103	3,570
MS	Delta	1	0	0	26	0	1	24
MS	Delta	2	1	0	50	1	1	48
MS	Gerald Andrus	1	95	19	3,263	95	95	3,287
MS	Jack Watson	1	5	1	171	5	5	173
MS	Jack Watson	2	5	1	179	5	5	181
MS	Jack Watson	3	8	2	271	8	8	273
MS	Jack Watson	4	218	44	7,481	218	218	7,537
MS	Jack Watson	5	447	89	15,326	446	446	15,442
MS	Moselle	1	0	0	35	0	1	33
MS	Moselle	2	1	0	76	1	2	70

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
MS	Moselle	3	0	0	42	0	1	38
MS	Moselle	**4	0	0	0	0	0	0
MS	Moselle	**5	0	0	0	0	0	0
MS	Moselle	**6	0	0	0	0	0	0
MS	Moselle	**7	0	0	0	0	0	0
MS	Natchez	1	0	0	2	0	0	3
MS	R D Morrow	1	139	28	4,772	139	139	4,808
MS	R D Morrow	2	152	30	5,224	152	152	5,263
MS	Rex Brown	1A	0	0	6	0	0	5
MS	Rex Brown	1B	0	0	6	0	0	5
MS	Rex Brown	3	0	0	41	0	1	37
MS	Rex Brown	4	0	0	159	0	4	139
MS	Sweatt	1	2	0	78	2	2	78
MS	Sweatt	2	3	1	85	2	2	86
MS	Victor Daniel Jr	1	287	57	11,171	286	287	9,916
MS	Victor Daniel Jr	2	414	83	14,194	413	413	14,303
MO	Asbury	1	197	39	6,936	196	197	6,986
MO	Blue Valley	3	135	27	4,643	135	135	4,678
MO	Chamois	2	158	32	5,425	158	158	5,466
MO	Columbia	6	26	6	897	26	26	905
MO	Columbia	7	105	21	3,610	104	104	3,639
MO	Columbia	8	3	0	125	3	3	125
MO	Combustion Turbine 1	**1	0	0	0	0	0	0
MO	Combustion Turbine 1	**NA4	0	0	0	0	0	0
MO	Combustion Turbine 1	**NA5	0	0	0	0	0	0
MO	Combustion Turbine 1	**NA6	0	0	0	0	0	0
MO	Combustion Turbine 2	**2	0	0	0	0	0	0
MO	Combustion Turbine 3	**3	0	0	0	0	0	0
MO	Hawthorn	5	356	71	12,702	355	356	12,309
MO	Iatan	1	470	94	16,114	469	469	16,236
MO	Iatan	**2	0	0	0	0	0	0
MO	James River	**GT2	18	4	600	18	18	605
MO	James River	3	96	19	3,308	96	20	681
MO	James River	4	173	35	5,940	173	36	1,253
MO	James River	5	60	12	2,121	60	60	2,136
MO	Jim Hill	**1	0	0	0	0	0	0
MO	Labadie	1	496	99	17,454	495	495	17,583
MO	Labadie	2	462	92	16,271	461	461	16,391
MO	Labadie	3	494	99	17,388	493	493	17,516
MO	Labadie	4	440	88	15,496	439	439	15,611
MO	Lake Road	6	18	4	601	18	18	606
MO	Meramec	1	30	6	2,739	30	30	1,029
MO	Meramec	2	32	6	2,772	32	32	1,105
MO	Meramec	3	68	14	6,044	68	68	2,362
MO	Meramec	4	74	15	7,160	74	74	2,554
MO	Montrose	1	90	18	3,171	90	90	3,194

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
MO	Montrose	2	100	20	3,515	100	100	3,541
MO	Montrose	3	123	25	4,324	123	123	4,356
MO	NA 1 -- 7223	**1	0	0	0	0	0	0
MO	NA 1 -- 7223	**2	0	0	0	0	0	0
MO	NA 1 -- 7223	**3	0	0	0	0	0	0
MO	NA 1 -- 7226	**1	0	0	0	0	0	0
MO	New Madrid	1	344	69	12,109	343	343	12,198
MO	New Madrid	2	396	79	13,930	395	395	14,033
MO	RG 1 & 2	**1	0	0	0	0	0	0
MO	RG 1 & 2	**2	0	0	0	0	0	0
MO	Rush Island	1	402	80	14,880	401	402	13,900
MO	Rush Island	2	449	90	15,562	448	449	15,518
MO	Sibley	1	15	3	516	15	15	520
MO	Sibley	2	18	4	634	18	18	639
MO	Sibley	3	216	43	7,591	215	215	7,648
MO	Sikeston	1	197	39	6,752	196	197	6,802
MO	Sioux	1	306	61	10,762	305	305	10,842
MO	Sioux	2	268	54	9,438	267	268	9,507
MO	Southwest	1	119	24	4,160	119	119	4,127
MO	Thomas Hill	MB1	125	25	4,396	125	125	4,429
MO	Thomas Hill	MB2	210	42	7,390	209	210	7,444
MO	Thomas Hill	MB3	529	106	18,151	528	529	18,288
MT	Colstrip	1	213	43	7,816	213	213	7,372
MT	Colstrip	2	213	43	7,827	212	212	7,349
MT	Colstrip	3	106	21	4,384	106	106	3,678
MT	Colstrip	4	85	17	2,900	84	84	2,923
MT	Frank Bird	1	0	0	0	0	0	0
MT	J E Corette	2	141	28	5,034	141	141	4,884
MT	Lewis & Clark	B1	41	8	1,436	41	41	1,403
NE	Bluffs	4	1	0	18	1	1	18
NE	C W Burdick	B-3	0	0	0	0	0	0
NE	Canaday	1	18	4	623	18	18	628
NE	Gerald Gentleman	1	259	52	10,753	259	259	8,960
NE	Gerald Gentleman	2	510	102	17,470	508	509	17,603
NE	Gerald T Whelan	1	68	14	2,321	68	68	2,338
NE	Harold Kramer	1	0	0	38	0	0	3
NE	Harold Kramer	2	0	0	40	0	0	3
NE	Harold Kramer	3	5	1	1,051	5	5	168
NE	Harold Kramer	4	6	1	2,078	6	6	198
NE	Lon Wright	8	34	7	2,037	34	34	1,184
NE	NA 1 -- 7019	**NA1	0	0	0	0	0	0
NE	Nebraska City	1	383	77	13,117	382	382	13,217
NE	North Omaha	1	30	6	2,382	30	30	1,045
NE	North Omaha	2	47	9	3,278	47	47	1,614
NE	North Omaha	3	55	11	3,197	55	55	1,900
NE	North Omaha	4	73	15	3,834	73	73	2,515

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
NE	North Omaha	5	88	18	4,629	88	88	3,043
NE	Platte	1	85	17	2,910	85	85	2,932
NE	Sheldon	1	23	5	2,163	23	23	792
NE	Sheldon	2	24	5	2,275	24	24	846
NV	Clark	1	0	0	20	0	1	22
NV	Clark	2	8	2	271	8	8	261
NV	Clark	3	0	0	18	0	0	16
NV	Fort Churchill	1	10	2	369	10	10	356
NV	Fort Churchill	2	16	3	574	16	16	544
NV	Harry Allen	**1	0	0	0	0	0	0
NV	Harry Allen	**2	0	0	0	0	0	0
NV	Harry Allen	**3	0	0	0	0	0	0
NV	Harry Allen	**4	0	0	0	0	0	0
NV	Harry Allen	**GT1	0	0	0	0	0	0
NV	Harry Allen	**GT2	0	0	0	0	0	0
NV	Harry Allen	**GT3	0	0	0	0	0	0
NV	Harry Allen	**GT4	0	0	0	0	0	0
NV	Mohave	1	759	152	26,508	757	757	26,165
NV	Mohave	2	756	151	26,405	753	754	26,059
NV	North Valmy	1	190	38	6,922	190	190	6,569
NV	North Valmy	2	115	23	4,239	115	115	3,966
NV	Reid Gardner	1	57	11	2,162	57	57	1,985
NV	Reid Gardner	2	59	12	2,190	59	59	2,025
NV	Reid Gardner	3	57	11	2,114	57	57	1,968
NV	Reid Gardner	4	68	14	2,800	68	68	2,342
NV	Sunrise	1	1	0	50	1	2	52
NV	Tracy	1	0	0	15	0	0	14
NV	Tracy	2	1	0	46	1	1	42
NV	Tracy	3	9	2	312	9	9	304
NH	Merrimack	1	124	25	4,263	124	124	4,296
NH	Merrimack	2	268	54	9,188	267	268	9,257
NH	Newington	1	307	61	11,602	306	307	10,613
NH	Schiller	4	42	8	1,506	42	42	1,440
NH	Schiller	5	38	8	1,449	38	38	1,298
NH	Schiller	6	48	10	1,633	48	48	1,646
NJ	B L England	1	111	22	3,789	110	110	3,818
NJ	B L England	2	143	29	4,902	143	143	4,939
NJ	B L England	3	70	14	2,406	70	70	2,424
NJ	Bergen	1	57	11	1,967	57	57	1,981
NJ	Bergen	2	59	12	2,032	59	59	2,047
NJ	Burlington	7	16	3	558	16	16	562
NJ	Deepwater	1	34	7	1,157	34	34	1,166
NJ	Deepwater	3	0	0	11	0	0	11
NJ	Deepwater	4	2	0	59	2	2	58
NJ	Deepwater	5	0	0	5	0	0	5
NJ	Deepwater	6	2	0	59	2	2	58

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
NJ	Deepwater	8	80	16	2,728	79	79	2,751
NJ	Deepwater	9	53	11	1,803	52	53	1,817
NJ	Gilbert	01	2	0	60	2	2	60
NJ	Gilbert	02	2	0	37	2	2	37
NJ	Gilbert	03	20	4	696	20	20	701
NJ	Gilbert	04	17	3	597	17	17	601
NJ	Gilbert	05	17	3	593	17	17	597
NJ	Gilbert	06	17	3	590	17	17	594
NJ	Gilbert	07	18	4	601	18	18	606
NJ	Hudson	1	35	7	1,190	35	35	1,199
NJ	Hudson	2	440	88	15,884	439	440	15,209
NJ	Kearny	7	4	1	144	4	4	146
NJ	Kearny	8	4	1	152	4	4	154
NJ	Linden	2	19	4	640	19	19	645
NJ	Linden	4	12	2	421	12	12	423
NJ	Linden	11	28	6	962	28	28	970
NJ	Linden	12	19	4	661	19	19	666
NJ	Linden	13	25	5	872	25	25	879
NJ	Mercer	1	221	44	7,639	220	220	7,616
NJ	Mercer	2	203	41	7,398	202	203	7,006
NJ	NA 5 -- 7217	**1	0	0	0	0	0	0
NJ	NA 6 -- 7218	**1	0	0	0	0	0	0
NJ	Sayreville	02	0	0	2	0	0	2
NJ	Sayreville	03	0	0	2	0	0	2
NJ	Sayreville	05	0	0	41	0	0	41
NJ	Sayreville	06	0	0	39	0	0	39
NJ	Sayreville	07	22	4	762	22	22	767
NJ	Sayreville	08	26	5	887	26	26	893
NJ	Sewaren	1	3	1	116	3	3	117
NJ	Sewaren	2	10	2	338	10	10	341
NJ	Sewaren	3	7	1	253	7	7	255
NJ	Sewaren	4	17	3	571	17	17	575
NJ	Sewaren	5	0	0	0	0	0	0
NJ	Werner	04	6	1	193	6	6	195
NM	Cunningham	121B	0	0	42	0	1	44
NM	Cunningham	122B	0	0	269	0	6	203
NM	Escalante	1	42	8	1,866	42	42	1,466
NM	Four Corners	1	96	19	3,574	96	96	3,323
NM	Four Corners	2	96	19	3,570	96	96	3,323
NM	Four Corners	3	120	24	4,454	120	120	4,162
NM	Four Corners	4	344	69	12,438	343	343	11,881
NM	Four Corners	5	356	71	13,204	355	356	12,305
NM	Maddox	051B	0	0	170	0	4	122
NM	North Lovington	S2	0	0	0	0	0	0
NM	Person	3	0	0	0	0	0	0
NM	Person	4	0	0	0	0	0	0

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
NM	Reeves	1	0	0	4	0	0	6
NM	Reeves	2	0	0	7	0	0	5
NM	Reeves	3	3	1	103	3	3	101
NM	Rio Grande	6	0	0	3	0	0	5
NM	Rio Grande	7	0	0	1	0	0	1
NM	Rio Grande	8	0	0	80	0	2	62
NM	San Juan	1	214	43	7,898	213	213	7,384
NM	San Juan	2	157	31	5,891	156	156	5,410
NM	San Juan	3	376	75	13,803	375	376	13,002
NM	San Juan	4	353	71	12,976	352	353	12,200
NY	Albany	1	52	10	1,791	52	52	1,803
NY	Albany	2	45	9	1,547	45	45	1,558
NY	Albany	3	46	9	1,584	46	46	1,597
NY	Albany	4	49	10	1,677	49	49	1,690
NY	Arthur Kill	20	43	9	1,469	43	43	1,480
NY	Arthur Kill	30	69	14	2,353	68	69	2,371
NY	Astoria	10	35	7	1,209	35	35	1,218
NY	Astoria	20	45	9	1,545	45	45	1,556
NY	Astoria	30	88	18	3,006	87	88	3,029
NY	Astoria	40	69	14	2,362	69	69	2,380
NY	Astoria	50	78	16	2,684	78	78	2,705
NY	Bowline Point	1	123	25	4,215	123	123	4,247
NY	Bowline Point	2	123	25	4,216	123	123	4,248
NY	C R Huntley	63	71	14	2,643	71	71	2,465
NY	C R Huntley	64	76	15	2,649	76	76	2,624
NY	C R Huntley	65	78	16	2,677	78	78	2,697
NY	C R Huntley	66	79	16	2,713	79	79	2,733
NY	C R Huntley	67	168	34	5,741	167	167	5,785
NY	C R Huntley	68	156	31	5,350	156	156	5,390
NY	Charles Poletti	001	187	37	6,401	186	186	6,450
NY	Danskammer	1	28	6	942	27	27	950
NY	Danskammer	2	27	5	915	27	27	921
NY	Danskammer	3	91	18	3,111	91	91	3,134
NY	Danskammer	4	175	35	5,995	174	175	6,041
NY	Dunkirk	1	82	16	2,827	82	82	2,848
NY	Dunkirk	2	94	19	3,210	93	93	3,235
NY	Dunkirk	3	153	31	5,261	153	153	5,300
NY	Dunkirk	4	171	34	5,872	171	171	5,916
NY	E F Barrett	10	69	14	2,358	69	69	2,375
NY	E F Barrett	20	68	14	2,323	68	68	2,341
NY	East River	50	41	8	1,388	40	40	1,400
NY	East River	60	41	8	1,422	41	41	1,432
NY	East River	70	30	6	1,027	30	30	1,035
NY	Far Rockaway	40	14	3	466	14	14	470
NY	Glenwood	40	27	5	934	27	27	940
NY	Glenwood	50	26	5	898	26	26	905

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State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
NY	Goudey	11	23	5	787	23	23	793
NY	Goudey	12	23	5	775	23	23	782
NY	Goudey	13	95	19	3,269	95	95	3,293
NY	Greenidge	4	28	6	976	28	28	983
NY	Greenidge	5	28	6	974	28	28	981
NY	Greenidge	6	92	18	3,167	92	92	3,190
NY	Hickling	1	21	4	721	20	20	709
NY	Hickling	2	21	4	721	20	20	709
NY	Hickling	3	25	5	890	25	25	849
NY	Hickling	4	26	5	928	26	26	885
NY	Jennison	1	17	3	647	17	17	600
NY	Jennison	2	18	4	672	18	18	624
NY	Jennison	3	18	4	720	18	18	626
NY	Jennison	4	18	4	720	18	18	626
NY	Kintigh	1	403	81	13,808	402	402	13,913
NY	Lovett	3	7	1	224	7	7	226
NY	Lovett	4	133	27	4,542	132	132	4,578
NY	Lovett	5	145	29	4,959	144	144	4,997
NY	Milliken	1	143	29	4,899	143	143	4,936
NY	Milliken	2	151	30	5,185	151	151	5,224
NY	Northport	1	241	48	8,275	241	241	8,337
NY	Northport	2	294	59	10,071	293	293	10,147
NY	Northport	3	323	65	11,057	322	322	11,142
NY	Northport	4	168	34	5,760	168	168	5,803
NY	Oswego	1	0	0	0	0	0	0
NY	Oswego	2	0	0	0	0	0	0
NY	Oswego	3	3	1	89	3	3	90
NY	Oswego	4	12	2	396	12	12	398
NY	Oswego	5	241	48	17,194	240	241	8,327
NY	Oswego	6	139	28	4,780	139	139	4,816
NY	Port Jefferson	1	14	3	472	14	14	476
NY	Port Jefferson	2	14	3	495	14	14	499
NY	Port Jefferson	3	128	26	4,371	127	127	4,405
NY	Port Jefferson	4	150	30	5,151	150	150	5,190
NY	Ravenswood	10	92	18	3,147	92	92	3,170
NY	Ravenswood	20	78	16	2,662	77	78	2,682
NY	Ravenswood	30	145	29	4,963	144	145	5,000
NY	Rochester 3	3	0	0	2	0	0	2
NY	Rochester 3	7	2	0	201	2	2	62
NY	Rochester 3	8	0	0	0	0	0	0
NY	Rochester 3	12	66	13	2,256	66	66	2,273
NY	Rochester 7	1	32	6	1,087	32	32	1,095
NY	Rochester 7	2	47	9	1,617	47	47	1,629
NY	Rochester 7	3	46	9	1,577	46	46	1,589
NY	Rochester 7	4	64	13	2,200	64	64	2,217
NY	Roseton	1	421	84	15,500	420	420	14,532

Table 2. ---- Phase II Allowance Allocations

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			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
NY	Roseton	2	375	75	14,837	374	375	12,962
NY	S A Carlson	9	19	4	660	19	19	666
NY	S A Carlson	10	19	4	669	19	19	674
NY	S A Carlson	11	13	2	422	13	13	426
NY	S A Carlson	12	37	7	1,269	36	37	1,278
NY	Waterside	41	7	1	251	7	7	253
NY	Waterside	42	7	1	246	7	7	248
NY	Waterside	51	13	2	414	13	13	416
NY	Waterside	52	13	2	415	12	12	418
NY	Waterside	61	12	2	429	12	12	431
NY	Waterside	62	14	2	505	14	14	507
NY	Waterside	80	33	7	1,121	33	33	1,129
NY	Waterside	90	35	7	1,227	35	35	1,236
NY	59th Street	110	2	0	64	2	2	64
NY	74th Street	120	13	3	444	13	13	448
NY	74th Street	121	13	3	446	13	13	450
NY	74th Street	122	13	3	444	13	13	448
NC	Asheville	1	192	38	6,584	192	192	6,633
NC	Asheville	2	153	31	5,230	152	152	5,271
NC	Belews Creek	1	898	180	30,731	895	896	30,966
NC	Belews Creek	2	945	190	32,370	943	944	32,616
NC	Buck	5	0	0	1,031	0	0	2
NC	Buck	6	0	0	589	0	0	1
NC	Buck	7	10	2	1,056	10	10	344
NC	Buck	8	17	3	2,319	17	17	602
NC	Buck	9	53	11	2,860	53	53	1,818
NC	Cape Fear	3	0	0	599	0	0	0
NC	Cape Fear	4	0	0	599	0	0	0
NC	Cape Fear	5	84	17	3,365	84	84	2,895
NC	Cape Fear	6	86	17	3,896	86	86	2,961
NC	Cliffside	1	0	0	898	0	0	1
NC	Cliffside	2	0	0	872	0	0	1
NC	Cliffside	3	1	0	1,291	1	1	21
NC	Cliffside	4	1	0	1,305	1	1	17
NC	Cliffside	5	343	69	13,971	342	343	11,861
NC	Dan River	1	11	2	1,907	11	11	363
NC	Dan River	2	10	2	2,777	10	10	334
NC	Dan River	3	17	3	2,789	17	17	597
NC	G G Allen	1	1	0	2,427	1	1	31
NC	G G Allen	2	1	0	2,813	1	1	34
NC	G G Allen	3	130	26	6,095	130	130	4,491
NC	G G Allen	4	93	19	5,725	93	93	3,207
NC	G G Allen	5	113	23	5,948	112	112	3,886
NC	L V Sutton	1	21	4	2,047	21	21	722
NC	L V Sutton	2	35	7	2,263	34	34	1,193
NC	L V Sutton	3	148	30	8,268	148	148	5,111

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
NC	Lee	1	19	4	1,632	19	19	649
NC	Lee	2	24	5	1,680	24	24	831
NC	Lee	3	141	28	5,736	140	140	4,855
NC	Marshall	1	209	42	8,723	208	208	7,211
NC	Marshall	2	236	47	9,218	235	235	8,146
NC	Marshall	3	432	86	15,778	431	431	14,914
NC	Marshall	4	387	77	15,059	386	387	13,373
NC	Mayo	1A	371	74	12,711	370	370	12,807
NC	Mayo	1B	371	74	12,711	370	370	12,807
NC	Riverbend	7	39	8	2,144	39	39	1,349
NC	Riverbend	8	36	7	2,106	36	36	1,245
NC	Riverbend	9	10	2	2,265	10	10	356
NC	Riverbend	10	34	7	2,619	34	34	1,174
NC	Roxboro	1	322	64	11,024	321	321	11,108
NC	Roxboro	2	570	114	19,528	568	569	19,676
NC	Roxboro	3A	258	52	9,044	257	257	8,902
NC	Roxboro	3B	258	52	9,044	257	257	8,902
NC	Roxboro	4A	302	60	10,347	301	301	10,425
NC	Roxboro	4B	302	60	10,347	301	301	10,425
NC	W H Weatherspoon	1	14	3	1,119	13	14	467
NC	W H Weatherspoon	2	14	3	1,122	14	14	473
NC	W H Weatherspoon	3	27	5	1,621	27	27	937
ND	Antelope Valley	B1	346	69	11,878	346	346	11,968
ND	Antelope Valley	B2	323	65	11,066	322	322	11,151
ND	Coal Creek	1	676	135	23,175	674	676	23,350
ND	Coal Creek	2	615	123	21,064	613	613	21,226
ND	Coyote	B1	469	94	16,088	468	468	16,210
ND	Leland Olds	1	264	53	9,052	263	264	9,120
ND	Leland Olds	2	767	153	26,248	765	765	26,448
ND	Milton R Young	B1	376	75	12,876	375	375	12,973
ND	Milton R Young	B2	461	92	15,793	459	460	15,913
ND	R M Heskett	B2	93	19	3,183	93	93	3,207
ND	Stanton	1	216	43	7,404	215	216	7,460
ND	Stanton	10	39	8	1,326	39	39	1,337
OH	Acme	9	0	0	1	0	0	1
OH	Acme	11	0	0	7	0	0	7
OH	Acme	13	0	0	1,846	0	0	9
OH	Acme	14	0	0	2,519	0	0	14
OH	Acme	15	0	0	3,365	0	0	19
OH	Acme	16	59	12	2,409	59	59	2,030
OH	Acme	91	23	5	2,007	22	23	778
OH	Acme	92	20	4	1,796	20	20	696
OH	Ashtabula	7	204	41	7,179	203	204	7,231
OH	Ashtabula	8	67	13	2,324	67	67	2,340
OH	Ashtabula	9	58	12	1,978	58	58	1,995
OH	Ashtabula	10	53	12	1,783	52	52	1,801

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
OH	Ashtabula	11	54	12	1,878	54	54	1,894
OH	Avon Lake	9	74	15	2,552	74	74	2,572
OH	Avon Lake	10	65	13	2,241	65	65	2,258
OH	Avon Lake	11	142	28	4,997	142	142	5,034
OH	Avon Lake	12	429	86	15,113	428	429	15,225
OH	Bay Shore	1	137	27	4,692	136	137	4,726
OH	Bay Shore	2	130	26	4,469	130	130	4,503
OH	Bay Shore	3	124	25	4,252	124	124	4,284
OH	Bay Shore	4	204	41	6,997	204	204	7,050
OH	Cardinal	1	418	84	14,694	416	417	14,803
OH	Cardinal	2	467	93	16,433	466	466	16,554
OH	Cardinal	3	485	97	17,204	484	484	16,747
OH	Cardinal/Tidd	**1	21	4	710	21	21	715
OH	Conesville	1	51	10	1,804	51	51	1,817
OH	Conesville	2	60	12	2,098	59	60	2,114
OH	Conesville	3	67	13	2,357	67	67	2,373
OH	Conesville	4	594	119	20,912	593	593	21,067
OH	Conesville	5	208	42	8,983	207	208	7,179
OH	Conesville	6	230	46	9,348	230	230	7,951
OH	Dover	**6	4	1	152	4	4	154
OH	Eastlake	1	95	19	3,347	95	95	3,371
OH	Eastlake	2	105	21	3,704	105	105	3,732
OH	Eastlake	3	122	24	4,295	122	122	4,327
OH	Eastlake	4	177	35	6,223	176	176	6,269
OH	Eastlake	5	469	94	16,511	468	468	16,633
OH	Edgewater	11	25	5	873	25	12	422
OH	Edgewater	12	27	5	942	27	13	455
OH	Edgewater	13	62	12	2,167	61	61	2,183
OH	Gen J M Gavin	1	964	194	33,905	962	963	34,158
OH	Gen J M Gavin	2	982	197	34,541	980	981	34,797
OH	Gorge	25	43	9	1,489	43	21	720
OH	Gorge	26	49	10	1,667	49	23	807
OH	Hamilton	9	34	7	1,658	34	34	1,162
OH	J M Stuart	1	569	114	19,518	568	568	19,666
OH	J M Stuart	2	540	108	18,503	538	539	18,643
OH	J M Stuart	3	535	107	18,347	534	534	18,486
OH	J M Stuart	4	566	113	19,390	564	565	19,537
OH	Killen Station	2	491	98	16,830	490	490	16,958
OH	Kyger Creek	1	235	47	8,053	234	235	8,114
OH	Kyger Creek	2	226	45	7,752	226	226	7,810
OH	Kyger Creek	3	218	44	7,480	218	218	7,536
OH	Kyger Creek	4	228	46	7,814	227	228	7,873
OH	Kyger Creek	5	228	46	7,828	228	228	7,887
OH	Lake Road	6	0	0	1,340	0	0	0
OH	Lake Shore	18	145	29	6,004	145	145	5,014
OH	Lake Shore	91	1	0	47	1	1	47

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
OH	Lake Shore	92	2	0	84	2	2	84
OH	Lake Shore	93	2	0	65	2	2	65
OH	Lake Shore	94	3	1	106	3	3	107
OH	Miami Fort	5-1	4	1	143	4	4	143
OH	Miami Fort	5-2	4	1	143	4	4	143
OH	Miami Fort	6	139	28	4,880	138	138	4,917
OH	Miami Fort	7	469	94	16,513	468	468	16,635
OH	Miami Fort	8	529	106	18,127	527	528	18,264
OH	Muskingum River	1	181	36	6,378	181	181	6,425
OH	Muskingum River	2	173	35	6,073	172	172	6,119
OH	Muskingum River	3	170	34	5,984	170	170	6,027
OH	Muskingum River	4	143	29	5,051	143	143	5,088
OH	Muskingum River	5	493	99	17,351	492	492	17,479
OH	Niles	1	85	17	2,978	84	84	3,000
OH	Niles	2	111	22	3,902	111	111	3,930
OH	O H Hutchings	H-1	11	2	1,734	11	11	398
OH	O H Hutchings	H-2	9	2	1,669	9	9	309
OH	O H Hutchings	H-3	17	3	1,600	17	17	585
OH	O H Hutchings	H-4	19	4	1,619	19	19	641
OH	O H Hutchings	H-5	15	3	1,627	15	15	514
OH	O H Hutchings	H-6	11	2	1,658	11	11	371
OH	Picway	9	60	12	2,116	60	60	2,131
OH	Poston	1	23	5	782	23	23	789
OH	Poston	2	21	4	727	21	21	733
OH	Poston	3	28	6	951	28	28	958
OH	R E Burger	1	36	7	1,226	36	17	593
OH	R E Burger	2	35	7	1,199	35	17	579
OH	R E Burger	3	36	7	1,239	36	17	599
OH	R E Burger	4	37	7	1,268	37	18	613
OH	R E Burger	5	38	8	1,319	37	37	1,331
OH	R E Burger	6	37	7	1,318	37	37	1,327
OH	R E Burger	7	131	26	4,622	131	131	4,656
OH	R E Burger	8	151	30	5,331	151	151	5,370
OH	Refuse & Coal	001	12	3	423	12	12	426
OH	Refuse & Coal	002	12	3	378	12	12	381
OH	Refuse & Coal	003	12	3	399	12	12	402
OH	Refuse & Coal	004	12	3	435	12	12	441
OH	Refuse & Coal	005	12	3	372	12	12	375
OH	Refuse & Coal	006	12	3	363	12	12	363
OH	Richard H Gorsuch	1	178	36	6,116	178	178	6,162
OH	Richard H Gorsuch	2	146	30	5,034	146	146	5,072
OH	Richard H Gorsuch	3	200	40	6,840	198	200	6,892
OH	Richard H Gorsuch	4	40	8	1,396	40	40	1,404
OH	Toronto	9	54	10	1,863	54	26	900
OH	Toronto	10	97	20	3,323	97	47	1,608
OH	Toronto	11	105	21	3,591	105	49	1,738

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
OH	W H Sammis	1	181	36	6,203	180	181	6,250
OH	W H Sammis	2	159	32	5,440	158	158	5,482
OH	W H Sammis	3	181	36	6,202	180	181	6,249
OH	W H Sammis	4	160	32	5,497	160	160	5,538
OH	W H Sammis	5	294	59	10,363	294	294	10,439
OH	W H Sammis	6	564	113	19,840	562	563	19,987
OH	W H Sammis	7	527	105	18,534	525	526	18,670
OH	W H Zimmer	1	468	94	16,060	467	468	16,181
OH	Walter C Beckjord	1	14	3	1,831	14	14	472
OH	Walter C Beckjord	2	21	4	1,855	21	21	711
OH	Walter C Beckjord	3	31	6	2,524	31	31	1,077
OH	Walter C Beckjord	4	62	12	3,250	62	62	2,141
OH	Walter C Beckjord	5	109	22	3,836	109	109	3,864
OH	Walter C Beckjord	6	280	56	9,869	280	280	9,942
OH	Woodsdale	**GT1	9	2	292	9	9	295
OH	Woodsdale	**GT2	9	2	292	9	9	295
OH	Woodsdale	**GT3	9	2	292	9	9	295
OH	Woodsdale	**GT4	9	2	292	9	9	295
OH	Woodsdale	**GT5	9	2	292	9	9	295
OH	Woodsdale	**GT6	9	2	292	9	9	295
OH	Woodsdale	**GT7	0	0	0	0	0	0
OH	Woodsdale	**GT8	0	0	0	0	0	0
OH	Woodsdale	**GT9	0	0	0	0	0	0
OH	Woodsdale	**GT10	0	0	0	0	0	0
OH	Woodsdale	**GT11	0	0	0	0	0	0
OH	Woodsdale	**GT12	0	0	0	0	0	0
OK	Anadarko	3	0	0	0	0	0	1
OK	Arbuckle	ARB	0	0	45	0	1	50
OK	Comanche	7251	0	0	333	0	4	144
OK	Comanche	7252	0	0	2	0	4	144
OK	Conoco	**1	6	1	221	6	6	222
OK	Conoco	**2	6	1	221	6	6	222
OK	GRDA	1	405	81	14,561	403	404	13,973
OK	GRDA	2	242	48	8,348	242	242	8,372
OK	Horshoe Lake	6	0	0	173	0	5	160
OK	Horshoe Lake	7	0	0	231	0	6	207
OK	Horshoe Lake	8	0	0	313	0	10	358
OK	Hugo	1	332	66	11,811	331	332	11,475
OK	Mooreland	1	0	0	0	0	0	1
OK	Mooreland	2	0	0	44	0	2	57
OK	Mooreland	3	0	0	7	0	0	17
OK	Muskogee	3	0	0	141	0	4	137
OK	Muskogee	4	257	51	9,260	256	257	8,880
OK	Muskogee	5	227	45	8,232	226	226	7,835
OK	Muskogee	6	403	81	14,344	402	403	13,931
OK	Mustang	1	0	0	32	0	1	26

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
OK	Mustang	2	0	0	26	0	1	25
OK	Mustang	3	0	0	1	0	2	81
OK	Mustang	4	0	0	163	0	6	191
OK	NA 1 -- 5030	**1	0	0	0	0	0	0
OK	NA 1 -- 5030	**2	0	0	0	0	0	0
OK	NA 1 -- 5030	**3	0	0	0	0	0	0
OK	Northeastern	3301	48	10	1,732	48	48	1,646
OK	Northeastern	3302	161	32	5,903	161	161	5,578
OK	Northeastern	3313	384	77	13,756	383	383	13,249
OK	Northeastern	3314	415	83	14,801	414	414	14,337
OK	Ponca	2	0	0	0	0	0	0
OK	Riverside	1501	0	0	519	0	12	417
OK	Riverside	1502	0	0	285	0	10	335
OK	Seminole	1	0	0	412	0	11	383
OK	Seminole	2	0	0	453	0	12	432
OK	Seminole	3	1	0	494	1	15	505
OK	Sooner	1	288	58	10,413	287	287	9,938
OK	Sooner	2	274	55	9,924	273	273	9,451
OK	Southwestern	8002	0	0	15	0	1	17
OK	Southwestern	8003	0	0	164	0	5	165
OK	Southwestern	801N	0	0	3	0	0	5
OK	Southwestern	801S	0	0	0	0	0	3
OK	Tulsa	1402	0	0	98	0	1	45
OK	Tulsa	1403	0	0	4	0	0	3
OK	Tulsa	1404	0	0	58	0	2	64
OR	Boardman	1SG	388	78	13,299	387	387	13,401
PA	Armstrong	1	176	35	6,180	175	175	6,226
PA	Armstrong	2	188	38	6,616	188	188	6,665
PA	Bruce Mansfield	1	369	74	12,643	368	368	12,740
PA	Bruce Mansfield	2	408	82	13,987	407	407	14,094
PA	Bruce Mansfield	3	420	84	14,389	419	419	14,498
PA	Brunner Island	1	338	68	11,904	337	338	11,992
PA	Brunner Island	2	379	76	13,338	378	378	13,437
PA	Brunner Island	3	656	131	23,078	654	655	23,250
PA	Cheswick	1	477	95	16,796	476	476	16,919
PA	Conemaugh	1	734	147	25,791	732	733	25,982
PA	Conemaugh	2	813	162	28,590	811	812	28,800
PA	Cromby	1	64	13	2,190	64	64	2,207
PA	Cromby	2	61	12	2,098	61	61	2,114
PA	Delaware	71	22	4	739	22	22	745
PA	Delaware	81	16	3	534	16	16	538
PA	Eddystone	1	74	15	2,830	74	74	2,560
PA	Eddystone	2	73	15	2,990	72	72	2,504
PA	Eddystone	3	55	11	1,884	55	55	1,899
PA	Eddystone	4	58	12	1,999	58	58	2,015
PA	Elrama	1	21	4	1,646	21	21	711

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
PA	Elrama	2	19	4	1,612	19	19	662
PA	Elrama	3	44	9	1,559	44	44	1,528
PA	Elrama	4	75	15	2,565	75	75	2,584
PA	F R Phillips	1	3	0	663	3	3	145
PA	F R Phillips	2	3	0	504	3	3	110
PA	F R Phillips	3	8	2	1,163	8	8	253
PA	F R Phillips	4	7	1	1,111	7	7	242
PA	F R Phillips	5	7	1	1,130	7	7	247
PA	F R Phillips	6	32	6	2,016	32	32	1,109
PA	Front Street	7	9	2	292	9	9	295
PA	Front Street	8	9	2	292	9	9	295
PA	Front Street	9	36	8	1,168	36	36	1,176
PA	Front Street	10	36	8	1,168	36	36	1,176
PA	Hatfield's Ferry	1	461	92	16,221	460	460	16,340
PA	Hatfield's Ferry	2	455	91	16,003	453	454	16,122
PA	Hatfield's Ferry	3	491	98	17,267	489	490	17,394
PA	Holtwood	17	104	21	3,550	103	103	3,578
PA	Homer City	1	515	103	17,656	514	514	17,790
PA	Homer City	2	447	89	16,225	446	446	15,441
PA	Homer City	3	802	160	27,469	800	801	27,676
PA	Hunlock Power	6	65	13	2,244	65	65	2,261
PA	Keystone	1	819	164	28,055	817	818	28,267
PA	Keystone	2	872	174	29,871	870	871	30,098
PA	Martins Creek	1	154	31	5,426	154	154	5,467
PA	Martins Creek	2	156	31	5,497	156	156	5,538
PA	Martins Creek	3	382	76	13,107	381	382	13,205
PA	Martins Creek	4	352	70	12,057	351	351	12,148
PA	Mitchell	1	0	0	0	0	0	0
PA	Mitchell	2	0	0	1	0	0	1
PA	Mitchell	3	0	0	0	0	0	0
PA	Mitchell	33	90	18	3,511	90	90	3,103
PA	Montour	1	696	139	24,052	693	695	24,018
PA	Montour	2	717	143	24,537	714	716	24,723
PA	New Castle	1	37	7	1,285	37	18	621
PA	New Castle	2	41	8	1,431	41	20	692
PA	New Castle	3	82	16	2,827	82	82	2,848
PA	New Castle	4	75	15	2,802	75	75	2,607
PA	New Castle	5	131	26	4,488	131	131	4,522
PA	Portland	1	72	14	2,546	72	72	2,565
PA	Portland	2	125	25	4,388	124	124	4,421
PA	Schuylkill	1	17	3	569	17	17	573
PA	Seward	12	32	6	1,090	32	32	1,098
PA	Seward	14	32	6	1,090	32	32	1,098
PA	Seward	15	145	29	4,973	145	145	5,010
PA	Shawville	1	125	25	4,405	125	125	4,437
PA	Shawville	2	126	25	4,431	126	126	4,463

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
PA	Shawville	3	173	35	6,076	172	172	6,122
PA	Shawville	4	171	34	6,036	171	171	6,081
PA	Springdale	77	0	0	0	0	0	0
PA	Springdale	88	0	0	0	0	0	0
PA	Sunbury	1A	52	10	1,808	52	52	1,822
PA	Sunbury	1B	52	10	1,807	52	52	1,821
PA	Sunbury	2A	52	10	1,808	52	52	1,822
PA	Sunbury	2B	52	10	1,808	52	52	1,822
PA	Sunbury	3	115	23	4,006	115	115	4,036
PA	Sunbury	4	148	30	5,220	148	148	5,259
PA	Titus	1	55	11	2,139	55	55	1,901
PA	Titus	2	63	13	2,259	63	63	2,179
PA	Titus	3	58	12	2,183	58	58	1,994
PA	Warren	1	21	4	716	21	21	721
PA	Warren	2	21	4	716	21	21	721
PA	Warren	3	21	4	736	21	21	741
PA	Warren	4	21	4	736	21	21	741
PA	Williamsburg	11	27	5	930	27	27	936
RI	Manchester Street	6	19	4	689	19	19	657
RI	Manchester Street	7	13	3	455	13	13	435
RI	Manchester Street	12	14	3	509	14	14	485
RI	South Street	121	30	5	1,081	30	30	1,048
RI	South Street	122	28	5	941	28	28	950
SC	Canadys Steam	CAN1	85	17	3,231	85	85	2,937
SC	Canadys Steam	CAN2	67	13	2,966	67	67	2,309
SC	Canadys Steam	CAN3	90	18	4,205	90	90	3,105
SC	Cope Station	COP1	76	15	2,601	76	76	2,620
SC	Cross	1	162	32	5,571	162	162	5,612
SC	Cross	2	259	52	8,889	259	259	8,956
SC	Dolphus M Grainger	1	90	18	3,096	90	90	3,119
SC	Dolphus M Grainger	2	8	2	275	8	8	277
SC	H B Robinson	1	84	17	3,798	84	84	2,908
SC	Hagood	HAG1	0	0	3	0	0	3
SC	Hagood	HAG2	0	0	451	0	0	2
SC	Hagood	HAG3	0	0	787	0	0	6
SC	Hagood	HAG4	28	6	942	27	27	951
SC	Jefferies	1	0	0	0	0	0	0
SC	Jefferies	2	0	0	1	0	0	1
SC	Jefferies	3	98	20	3,866	98	98	3,378
SC	Jefferies	4	91	18	3,725	91	91	3,155
SC	McMeekin	MCM1	118	24	4,056	118	118	4,087
SC	McMeekin	MCM2	117	23	4,015	117	117	4,045
SC	NA 1 -- 7106	**GT1	0	0	0	0	0	0
SC	Urquhart	URQ1	64	13	2,182	64	64	2,199
SC	Urquhart	URQ2	49	10	1,917	49	49	1,685
SC	Urquhart	URQ3	84	17	2,897	84	84	2,919

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
SC	W S Lee	1	26	5	2,128	26	26	900
SC	W S Lee	2	33	7	2,270	33	33	1,132
SC	W S Lee	3	51	10	3,434	51	51	1,773
SC	Wateree	WAT1	282	56	9,661	281	281	9,735
SC	Wateree	WAT2	261	52	9,218	261	261	9,022
SC	Williams	WIL1	459	92	15,729	458	458	15,849
SC	Winyah	1	220	44	7,530	219	219	7,588
SC	Winyah	2	148	30	6,204	148	148	5,128
SC	Winyah	3	73	15	3,595	72	73	2,508
SC	Winyah	4	99	20	3,407	99	99	3,433
SD	Angus Anson Site	2	25	5	846	25	25	853
SD	Angus Anson Site	3	30	6	1,014	30	30	1,022
SD	Big Stone	1	376	75	13,640	375	375	12,973
SD	Huron	**2A	2	0	80	2	2	80
SD	Huron	**2B	3	1	102	3	3	103
SD	Pathfinder	11	0	0	11	0	0	11
SD	Pathfinder	12	0	0	2	0	0	2
TN	Pathfinder	13	0	0	2	0	0	2
TN	Allen	1	187	37	6,571	186	186	6,619
TN	Allen	2	204	41	7,190	204	204	7,243
TN	Allen	3	191	38	6,718	190	191	6,767
TN	Bull Run	1	727	145	24,902	725	726	25,090
TN	Cumberland	1	1,057	212	37,174	1,054	1,055	37,451
TN	Cumberland	2	1,156	232	40,664	1,153	1,154	40,967
TN	Gallatin	1	215	43	7,562	214	214	7,618
TN	Gallatin	2	211	42	7,422	210	211	7,476
TN	Gallatin	3	244	49	8,586	243	244	8,649
TN	Gallatin	4	259	52	9,116	258	259	9,183
TN	John Sevier	1	184	37	6,324	184	184	6,372
TN	John Sevier	2	184	37	6,321	184	184	6,369
TN	John Sevier	3	189	38	6,481	189	189	6,531
TN	John Sevier	4	193	39	6,630	193	193	6,680
TN	Johnsonville	1	95	19	3,339	95	95	3,364
TN	Johnsonville	2	98	20	3,445	98	98	3,471
TN	Johnsonville	3	102	20	3,608	102	102	3,633
TN	Johnsonville	4	97	19	3,424	97	97	3,449
TN	Johnsonville	5	100	20	3,533	100	100	3,558
TN	Johnsonville	6	96	19	3,385	96	96	3,410
TN	Johnsonville	7	109	22	3,849	109	109	3,878
TN	Johnsonville	8	106	21	3,732	106	106	3,759
TN	Johnsonville	9	86	17	3,035	86	86	3,057
TN	Johnsonville	10	92	18	3,238	92	92	3,262
TN	Kingston	1	120	24	4,128	120	120	4,158
TN	Kingston	2	115	23	3,969	115	115	3,966
TN	Kingston	3	138	28	4,723	137	138	4,760
TN	Kingston	4	146	29	5,012	146	146	5,050

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
TN	Kingston	5	180	36	6,158	179	179	6,206
TN	Kingston	6	184	37	6,310	184	184	6,358
TN	Kingston	7	179	36	6,153	179	179	6,200
TN	Kingston	8	168	34	5,750	167	167	5,794
TN	Kingston	9	186	37	6,368	185	185	6,417
TN	Watts Bar	A	0	0	0	0	0	0
TN	Watts Bar	B	0	0	0	0	0	0
TN	Watts Bar	C	0	0	0	0	0	0
TN	Watts Bar	D	0	0	0	0	0	0
TX	Barney M Davis	1	1	0	496	1	12	412
TX	Barney M Davis	2	1	0	398	1	11	384
TX	Big Brown	1	584	117	20,868	582	583	20,161
TX	Big Brown	2	558	112	19,766	557	557	19,286
TX	Bryan	6	0	0	19	0	1	22
TX	C E Newman	BW5	0	0	3	0	0	4
TX	Cedar Bayou	CBY1	0	0	814	0	20	702
TX	Cedar Bayou	CBY2	0	0	921	0	25	857
TX	Cedar Bayou	CBY3	0	0	725	0	20	707
TX	Coleto Creek	1	400	80	14,641	399	399	13,807
TX	Coleto Creek	**2	0	0	0	0	0	0
TX	Collin	1	1	0	92	1	3	94
TX	Concho	7	0	0	11	0	0	13
TX	Dallas	3	0	0	27	0	1	23
TX	Dallas	9	0	0	26	0	1	25
TX	Dansby	1	1	0	94	1	3	106
TX	Decker Creek	1	0	0	128	0	4	150
TX	Decker Creek	2	0	0	195	0	5	181
TX	Decordova	1	1	0	1,018	1	25	881
TX	Deepwater	DWP9	0	0	28	0	1	37
TX	E S Joslin	1	0	0	260	0	6	210
TX	Eagle Mountain	1	0	0	52	0	1	43
TX	Eagle Mountain	2	1	0	140	1	3	116
TX	Eagle Mountain	3	0	0	100	0	3	109
TX	Forest Grove	**1	0	0	0	0	0	0
TX	Fort Phantom	1	0	0	126	0	4	129
TX	Fort Phantom	2	1	0	187	1	6	192
TX	Generic Station	**1	0	0	0	0	0	0
TX	Generic Station	**2	0	0	0	0	0	0
TX	Gibbons Creek	1	403	81	14,333	401	402	13,904
TX	Graham	1	0	0	235	0	6	194
TX	Graham	2	1	0	496	1	12	406
TX	Greens Bayou	GBY1	0	0	1	0	0	3
TX	Greens Bayou	GBY2	0	0	2	0	0	3
TX	Greens Bayou	GBY3	0	0	15	0	0	6
TX	Greens Bayou	GBY4	0	0	19	0	0	8
TX	Greens Bayou	GBY5	1	0	352	1	9	308

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
TX	Handley	1A	0	0	7	0	0	3
TX	Handley	1B	0	0	0	0	0	3
TX	Handley	2	0	0	21	0	0	15
TX	Handley	3	1	0	423	1	11	393
TX	Handley	4	0	0	118	0	3	112
TX	Handley	5	1	0	136	1	4	127
TX	Harrington Station	061B	223	45	8,189	223	223	7,711
TX	Harrington Station	062B	237	47	8,674	237	237	8,197
TX	Harrington Station	063B	253	51	9,218	252	253	8,741
TX	Hiram Clarke	HOC1	0	0	0	0	0	0
TX	Hiram Clarke	HOC2	0	0	0	0	0	0
TX	Hiram Clarke	HOC3	0	0	3	0	0	2
TX	Hiram Clarke	HOC4	0	0	2	0	0	1
TX	Holly Ave	1	0	0	59	0	2	71
TX	Holly Ave	2	0	0	71	0	2	76
TX	Holly Street	1	0	0	49	0	0	17
TX	Holly Street	2	0	0	31	0	1	18
TX	Holly Street	3	0	0	68	0	2	66
TX	Holly Street	4	0	0	43	0	2	82
TX	J K Spruce	**2	0	0	0	0	0	0
TX	J K Spruce	BLR1	194	39	6,653	194	194	6,703
TX	J L Bates	1	0	0	48	0	1	46
TX	J L Bates	2	0	0	124	0	3	101
TX	J T Deely	1	364	73	13,063	363	363	12,571
TX	J T Deely	2	380	76	13,629	379	379	13,113
TX	Jones Station	151B	0	0	125	0	2	74
TX	Jones Station	152B	0	0	93	0	2	67
TX	Knox Lee	2	0	0	0	0	0	0
TX	Knox Lee	3	0	0	5	0	0	2
TX	Knox Lee	4	0	0	29	0	0	13
TX	Knox Lee	5	0	0	251	0	4	149
TX	La Palma	7	0	0	178	0	4	153
TX	Lake Creek	1	0	0	39	0	1	29
TX	Lake Creek	2	0	0	191	0	4	141
TX	Lake Hubbard	1	1	0	170	1	6	201
TX	Lake Hubbard	2	2	0	604	2	17	578
TX	Laredo	1	0	0	15	0	0	16
TX	Laredo	2	0	0	14	0	0	14
TX	Laredo	3	0	0	85	0	3	116
TX	Leon Creek	3	0	0	2	0	0	2
TX	Leon Creek	4	0	0	10	0	0	8
TX	Lewis Crrek	1	0	0	317	0	8	263
TX	Lewis Crrek	2	0	0	271	0	7	257
TX	Limestone	LIM1	687	137	23,650	685	687	23,725
TX	Limestone	LIM2	411	82	14,076	409	410	14,182
TX	Lon C Hill	1	0	0	9	0	0	7

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
TX	Lon C Hill	2	0	0	10	0	0	7
TX	Lon C Hill	3	0	0	179	0	3	91
TX	Lon C Hill	4	0	0	197	0	7	238
TX	Lone Star	1	0	0	0	0	0	10
TX	Malakoff	**1	45	9	1,530	45	45	1,542
TX	Malakoff	**2	0	0	0	0	0	0
TX	Martin Lake	1	933	187	33,044	931	932	32,202
TX	Martin Lake	2	905	182	32,084	903	903	31,222
TX	Martin Lake	3	940	189	33,247	937	938	32,429
TX	Mission Road	3	0	0	3	0	0	8
TX	Monticello	1	659	132	23,509	657	659	22,760
TX	Monticello	2	639	128	22,810	637	638	22,061
TX	Monticello	3	987	198	35,034	984	985	34,043
TX	Morgan Creek	3	0	0	8	0	0	6
TX	Morgan Creek	4	0	0	72	0	2	56
TX	Morgan Creek	5	0	0	154	0	5	164
TX	Morgan Creek	6	6	1	835	6	22	777
TX	Mountain Creek	2	0	0	4	0	0	3
TX	Mountain Creek	3A	0	0	11	0	0	5
TX	Mountain Creek	3B	0	0	2	0	0	5
TX	Mountain Creek	6	1	0	63	1	2	74
TX	Mountain Creek	7	0	0	62	0	2	58
TX	Mountain Creek	8	1	0	527	1	15	535
TX	NA 1 -- 7219	**1	0	0	0	0	0	0
TX	NA 1 -- 7219	**2	0	0	0	0	0	0
TX	NA 2 -- 4274	**NA1	0	0	0	0	0	0
TX	Neches	11	0	0	0	0	0	0
TX	Neches	13	0	0	0	0	0	0
TX	Neches	15	0	0	0	0	0	0
TX	Neches	18	0	0	0	0	0	0
TX	Newman	1	0	0	14	0	1	18
TX	Newman	2	0	0	29	0	1	41
TX	Newman	3	0	0	88	0	3	94
TX	Newman	HRSG1	0	0	99	0	4	138
TX	Nichols Stattion	141B	0	0	77	0	2	82
TX	Nichols Stattion	142B	0	0	86	0	2	76
TX	Nichols Stattion	143B	0	0	50	0	1	31
TX	North Lake	1	1	0	131	1	4	129
TX	North Lake	2	1	0	150	1	4	141
TX	North Lake	3	2	0	294	2	7	255
TX	North Main	4	0	0	42	0	1	35
TX	North Texas	3	0	0	13	0	0	8
TX	Nueces Bay	5	0	0	1	0	0	1
TX	Nueces Bay	6	0	0	140	0	3	114
TX	Nueces Bay	7	0	0	496	0	12	431
TX	O W Sommers	1	2	0	478	2	14	477

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
TX	O W Sommers	2	0	0	188	0	9	322
TX	Oak Creek	1	0	0	106	0	3	107
TX	Oklaunion	1	228	46	7,813	227	228	7,872
TX	P H Robinson	PHR1	0	0	645	0	13	435
TX	P H Robinson	PHR2	0	0	494	0	14	491
TX	P H Robinson	PHR3	0	0	685	0	15	506
TX	P H Robinson	PHR4	0	0	796	0	18	620
TX	Paint Creek	1	0	0	11	0	0	10
TX	Paint Creek	2	0	0	11	0	0	11
TX	Paint Creek	3	1	0	28	1	2	53
TX	Paint Creek	4	0	0	105	0	3	103
TX	Parkdale	1	0	0	34	0	1	36
TX	Parkdale	2	0	0	62	0	2	66
TX	Parkdale	3	1	0	61	1	2	76
TX	Permian Basin	5	0	0	103	0	3	105
TX	Permian Basin	6	8	2	802	8	24	828
TX	Pirkey	1	574	115	20,417	572	573	19,809
TX	Plant X	111B	0	0	0	0	0	0
TX	Plant X	112B	0	0	2	0	0	1
TX	Plant X	113B	0	0	89	0	1	30
TX	Plant X	114B	0	0	0	0	0	3
TX	Powerlane Plant	2	13	3	456	13	14	467
TX	Powerlane Plant	3	1	0	37	1	1	38
TX	R W Miller	1	0	0	55	0	2	54
TX	R W Miller	2	0	0	98	0	3	98
TX	R W Miller	3	0	0	218	0	5	181
TX	R W Miller	**4	25	5	846	25	25	853
TX	R W Miller	**5	25	5	846	25	25	853
TX	Ray Olinger	BW2	0	0	60	0	2	52
TX	Ray Olinger	BW3	0	0	79	0	2	86
TX	Ray Olinger	CE1	0	0	42	0	1	33
TX	Rio Pecos	5	0	0	64	0	2	69
TX	Rio Pecos	6	0	0	179	0	5	172
TX	River Crest	1	1	0	61	1	2	70
TX	Sabine	1	0	0	152	0	6	204
TX	Sabine	2	0	0	164	0	6	197
TX	Sabine	3	0	0	576	0	15	503
TX	Sabine	4	0	0	504	0	18	626
TX	Sabine	5	0	0	323	0	11	392
TX	Sam Bertron	SRB1	0	0	57	0	1	49
TX	Sam Bertron	SRB2	0	0	18	0	1	33
TX	Sam Bertron	SRB3	0	0	120	0	3	90
TX	Sam Bertron	SRB4	0	0	79	0	2	79
TX	Sam Seymour	1	437	87	15,823	436	436	15,087
TX	Sam Seymour	2	476	95	17,301	475	475	16,435
TX	Sam Seymour	3	304	61	10,433	304	304	10,513

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
TX	San Angelo	2	0	0	161	0	5	164
TX	San Miguel	SM-1	482	96	17,120	481	481	16,651
TX	Sandow	4	722	144	25,554	719	721	24,915
TX	Seaholm	9	0	0	4	0	0	3
TX	Sim Gideon	1	0	0	47	0	1	51
TX	Sim Gideon	2	0	0	56	0	2	58
TX	Sim Gideon	3	0	0	277	0	9	321
TX	Spencer	4	0	0	19	0	1	17
TX	Spencer	5	0	0	23	0	1	22
TX	Stryker Creek	1	0	0	170	0	4	138
TX	Stryker Creek	2	1	0	525	1	16	563
TX	T C Fergusen	1	0	0	253	0	7	254
TX	T H Wharton	THW1	0	0	7	0	0	5
TX	T H Wharton	THW2	0	0	97	0	2	82
TX	TNP One	U1	62	12	2,111	61	61	2,127
TX	TNP One	U2	102	20	3,480	101	101	3,507
TX	Tolk Station	171B	407	81	14,700	406	406	14,057
TX	Tolk Station	172B	403	81	14,363	402	402	13,925
TX	Tradinghouse	1	0	0	593	0	15	516
TX	Tradinghouse	2	1	0	995	1	26	903
TX	Trinidad	7	0	0	6	0	0	4
TX	Trinidad	8	0	0	1	0	0	3
TX	Trinidad	9	0	0	135	0	3	115
TX	Twin Oak	1	232	46	7,969	232	232	8,028
TX	Twin Oak	2	45	9	1,531	45	45	1,542
TX	V H Braunig	1	0	0	78	0	4	122
TX	V H Braunig	2	0	0	121	0	4	140
TX	V H Braunig	3	0	0	416	0	11	392
TX	Valley	1	0	0	77	0	3	97
TX	Valley	2	1	0	518	1	16	540
TX	Valley	3	0	0	124	0	4	129
TX	Victoria	5	0	0	6	0	0	6
TX	Victoria	6	0	0	8	0	0	4
TX	Victoria	7	0	0	110	0	3	102
TX	Victoria	8	0	0	238	0	6	224
TX	W A Parish	WAP1	0	0	57	0	1	51
TX	W A Parish	WAP2	0	0	56	0	1	45
TX	W A Parish	WAP3	0	0	245	0	5	158
TX	W A Parish	WAP4	0	0	558	0	15	511
TX	W A Parish	WAP5	634	127	22,751	632	632	21,881
TX	W A Parish	WAP6	573	115	20,646	572	572	19,803
TX	W A Parish	WAP7	416	83	15,059	415	415	14,365
TX	W A Parish	WAP8	186	37	7,250	185	186	6,421
TX	W B Tuttle	1	0	0	2	0	0	3
TX	W B Tuttle	2	0	0	19	0	1	17
TX	W B Tuttle	3	0	0	11	0	0	14

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
TX	W B Tuttle	4	0	0	48	0	2	52
TX	Webster	WEB1	0	0	14	0	0	5
TX	Webster	WEB2	0	0	17	0	0	7
TX	Webster	WEB3	0	0	343	0	9	320
TX	Welsh	1	370	74	13,255	369	369	12,772
TX	Welsh	2	357	71	12,775	356	356	12,334
TX	Welsh	3	420	84	15,136	419	420	14,517
TX	Wilkes	1	0	0	30	0	2	58
TX	Wilkes	2	0	0	118	0	3	93
TX	Wilkes	3	0	0	129	0	2	74
UT	Bonanza	1-1	255	51	10,734	255	255	8,818
UT	Carbon	1	55	11	1,902	55	55	1,917
UT	Carbon	2	72	14	2,485	72	72	2,503
UT	Gadsby	1	1	0	24	1	1	24
UT	Gadsby	2	12	2	1,688	12	12	408
UT	Gadsby	3	44	9	2,256	44	44	1,520
UT	Hale	1	0	0	1	0	0	1
UT	Hunter (Emery)	1	216	43	7,411	216	216	7,466
UT	Hunter (Emery)	2	231	46	7,914	230	230	7,974
UT	Hunter (Emery)	3	326	65	11,189	326	326	11,273
UT	Huntington	1	230	46	7,879	229	229	7,940
UT	Huntington	2	283	57	9,696	282	282	9,771
UT	Intermountain	1SGA	83	17	2,858	83	83	2,880
UT	Intermountain	2SGA	84	17	2,878	84	84	2,900
VT	J C McNeil	1	1	0	104	1	1	38
VA	Bremo Power Station	3	51	10	2,019	51	51	1,768
VA	Bremo Power Station	4	150	30	5,130	149	149	5,170
VA	Chesapeake	1	22	4	2,113	22	22	764
VA	Chesapeake	2	29	6	2,204	29	29	1,000
VA	Chesapeake	3	132	26	4,534	132	132	4,567
VA	Chesapeake	4	170	34	5,838	169	169	5,861
VA	Chesterfield	3	54	11	2,550	54	54	1,856
VA	Chesterfield	4	135	27	4,643	135	135	4,678
VA	Chesterfield	5	266	53	9,113	265	265	9,182
VA	Chesterfield	6	477	95	17,044	476	476	16,470
VA	Chesterfield	**8A	40	8	1,379	40	40	1,390
VA	Clinch River	1	154	31	5,317	153	153	5,302
VA	Clinch River	2	177	35	6,078	177	177	6,123
VA	Clinch River	3	164	33	5,618	163	164	5,661
VA	Clover	1	85	17	2,921	85	85	2,943
VA	Clover	2	85	17	2,921	85	85	2,943
VA	East Chandler	**2	0	0	0	0	0	0
VA	Glen Lyn	51	24	5	1,147	24	24	815
VA	Glen Lyn	52	23	5	1,108	23	23	787
VA	Glen Lyn	6	152	30	5,505	152	152	5,251
VA	Possum Point	1	0	0	0	0	0	0

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
VA	Possum Point	2	0	0	0	0	0	0
VA	Possum Point	3	65	13	2,634	65	65	2,253
VA	Possum Point	4	195	39	6,686	194	195	6,736
VA	Possum Point	5	126	25	4,311	125	126	4,343
VA	Potomac River	1	48	10	2,324	48	48	1,650
VA	Potomac River	2	49	10	2,299	48	48	1,677
VA	Potomac River	3	80	16	2,740	80	80	2,761
VA	Potomac River	4	88	18	3,019	88	88	3,043
VA	Potomac River	5	84	17	2,896	84	84	2,918
VA	Yorktown	1	135	27	4,644	135	135	4,679
VA	Yorktown	2	130	26	4,648	130	130	4,503
VA	Yorktown	3	183	37	6,268	182	183	6,316
WA	Centralia	BW21	553	111	18,965	552	552	19,108
WA	Centralia	BW22	590	118	20,219	588	589	20,373
WA	Shuffleton	1	0	0	0	0	0	0
WA	Shuffleton	2	0	0	0	0	0	0
WA	Shuffleton	3	0	0	0	0	0	0
WV	Albright	1	57	11	1,963	57	57	1,978
WV	Albright	2	60	12	2,042	59	59	2,058
WV	Albright	3	130	26	4,572	130	130	4,606
WV	Fort Martin	1	507	101	17,834	505	506	17,965
WV	Fort Martin	2	502	100	17,667	501	501	17,797
WV	Harrison	1	592	118	20,848	591	591	21,002
WV	Harrison	2	562	112	19,790	561	561	19,936
WV	Harrison	3	506	101	17,797	504	505	17,928
WV	John E Amos	1	655	131	22,458	653	654	22,630
WV	John E Amos	2	752	150	25,749	750	751	25,944
WV	John E Amos	3	1,205	242	41,270	1,202	1,203	41,584
WV	Kammer	1	228	46	8,036	228	228	8,095
WV	Kammer	2	237	47	8,343	236	237	8,404
WV	Kammer	3	212	42	7,457	211	211	7,512
WV	Kanawha River	1	115	23	4,439	115	115	3,981
WV	Kanawha River	2	103	21	4,270	102	102	3,545
WV	Mitchell	1	536	107	18,856	534	535	18,995
WV	Mitchell	2	554	111	19,511	553	553	19,656
WV	Mountaineer (1301)	1	1,023	205	35,018	1,020	1,021	35,285
WV	Mt Storm	1	533	107	18,748	531	532	18,887
WV	Mt Storm	2	500	100	17,588	498	499	17,718
WV	Mt Storm	3	517	103	18,193	516	516	18,327
WV	Phil Sporn	11	70	14	3,116	70	70	2,434
WV	Phil Sporn	21	59	12	2,953	59	59	2,048
WV	Phil Sporn	31	85	17	3,296	85	85	2,932
WV	Phil Sporn	41	67	13	3,040	66	67	2,302
WV	Phil Sporn	51	305	61	10,556	304	304	10,519
WV	Pleasants	1	511	102	17,501	509	510	17,633
WV	Pleasants	2	586	117	20,077	584	585	20,229

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009				Years 2010 and Beyond	
			(A) Auction Reserve Deduction	(B) Repower-ing Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	(E) Auction Reserve Deduction	(F)3 Total Annual Phase II
WV	Rivesville	7	20	4	1,233	20	20	696
WV	Rivesville	8	60	12	2,517	60	60	2,086
WV	Willow Island	1	28	6	1,490	28	28	961
WV	Willow Island	2	117	23	4,661	116	116	4,029
WI	Alma	B4	35	7	1,186	34	35	1,194
WI	Alma	B5	55	11	1,895	55	55	1,910
WI	Bay Front	1	14	3	1,043	14	14	512
WI	Bay Front	2	16	3	526	16	16	530
WI	Bay Front	3	0	0	0	0	0	0
WI	Bay Front	4	0	0	33	0	0	16
WI	Bay Front	5	4	0	281	4	4	135
WI	Blount Street	3	0	0	6	0	0	6
WI	Blount Street	5	0	0	7	0	0	7
WI	Blount Street	6	0	0	7	0	0	7
WI	Blount Street	7	3	0	1,476	3	3	101
WI	Blount Street	8	12	2	1,128	12	12	415
WI	Blount Street	9	16	3	1,180	16	16	555
WI	Blount Street	11	0	0	1	0	0	1
WI	Columbia	1	449	90	15,394	448	448	15,512
WI	Columbia	2	254	51	8,707	253	254	8,772
WI	Combustion Turbine	**2	0	0	0	0	0	0
WI	Commerce	25	0	0	4	0	0	4
WI	Concord	**1	4	1	125	4	4	126
WI	Concord	**2	4	1	125	4	4	126
WI	Concord	**3	4	1	125	4	4	126
WI	Concord	**4	4	1	125	4	4	126
WI	Edgewater	3	36	7	1,230	36	36	1,239
WI	Edgewater	4	302	60	10,336	301	301	10,415
WI	Edgewater	5	332	66	11,393	331	332	11,479
WI	Genoa	1	233	47	7,972	232	232	8,034
WI	J P Madgett	B1	209	42	7,394	208	209	7,219
WI	Manitowoc	6	18	3	669	18	18	672
WI	Manitowoc	7	24	5	809	24	24	813
WI	Manitowoc	8	7	1	237	7	7	238
WI	NA 1 -- 7205	**1	0	0	0	0	0	0
WI	NA 1 -- 7205	**2	0	0	0	0	0	0
WI	NA 1 -- 7205	**3	0	0	0	0	0	0
WI	NA3	**1	0	0	0	0	0	0
WI	NA4	**1	0	0	0	0	0	0
WI	Nelson Dewey	1	73	15	2,509	73	73	2,528
WI	Nelson Dewey	2	81	16	2,792	81	81	2,813
WI	North Oak Creek	1	61	12	2,107	61	61	2,122
WI	North Oak Creek	2	60	12	2,069	60	60	2,084
WI	North Oak Creek	3	62	12	2,118	62	62	2,133
WI	North Oak Creek	4	72	14	2,468	72	72	2,487
WI	Paris	**1	4	1	123	4	4	124

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
WI	Paris	**2	4	1	123	4	4	124
WI	Paris	**3	4	1	123	4	4	124
WI	Paris	**4	4	1	123	4	4	124
WI	Pleasant Prairie	1	342	68	11,734	341	342	11,822
WI	Pleasant Prairie	2	484	97	16,583	482	483	16,709
WI	Port Washington	1	15	3	526	15	15	530
WI	Port Washington	2	30	6	1,025	30	30	1,033
WI	Port Washington	3	25	5	853	25	25	860
WI	Port Washington	4	23	5	799	23	23	806
WI	Port Washington	5	31	6	1,055	31	31	1,063
WI	Pulliam	3	4	1	139	4	4	139
WI	Pulliam	4	6	1	207	6	6	209
WI	Pulliam	5	18	4	603	18	18	608
WI	Pulliam	6	23	5	786	23	23	792
WI	Pulliam	7	59	12	2,024	59	59	2,039
WI	Pulliam	8	91	18	3,135	91	91	3,159
WI	Rock River	1	45	9	1,551	45	45	1,562
WI	Rock River	2	43	9	1,473	43	43	1,484
WI	South Fond du Lac	**CT1	19	4	635	18	18	640
WI	South Fond du Lac	**CT2	1	0	39	1	1	39
WI	South Fond du Lac	**CT3	1	0	39	1	1	39
WI	South Fond du Lac	**CT4	0	0	0	0	0	0
WI	South Oak Creek	5	113	23	3,862	112	113	3,892
WI	South Oak Creek	6	141	28	4,833	141	141	4,870
WI	South Oak Creek	7	189	38	6,466	188	188	6,516
WI	South Oak Creek	8	185	37	6,355	185	185	6,402
WI	Stoneman	B1	6	1	176	6	6	176
WI	Stoneman	B2	6	1	222	6	6	224
WI	Valley	1	45	9	1,796	45	45	1,570
WI	Valley	2	46	9	1,815	46	46	1,586
WI	Valley	3	42	8	1,946	42	42	1,453
WI	Valley	4	41	8	1,892	41	41	1,414
WI	West Marinette	**33	22	4	761	22	22	766
WI	Weston	1	22	4	758	22	22	764
WI	Weston	2	53	11	1,799	52	52	1,813
WI	Weston	3	281	56	9,648	281	281	9,721
WY	Dave Johnston	BW41	131	26	4,680	130	131	4,519
WY	Dave Johnston	BW42	127	25	4,547	127	127	4,396
WY	Dave Johnston	BW43	246	49	8,781	246	246	8,513
WY	Dave Johnston	BW44	185	37	6,767	184	184	6,381
WY	Jim Bridger	BW71	583	117	20,796	581	582	20,134
WY	Jim Bridger	BW72	571	114	20,356	569	570	19,712
WY	Jim Bridger	BW73	547	109	19,481	545	546	18,876
WY	Jim Bridger	BW74	96	19	4,046	96	96	3,329
WY	Laramie River	1	122	24	5,089	122	122	4,228
WY	Laramie River	2	104	21	4,282	104	104	3,590

Table 2. ---- Phase II Allowance Allocations

State	Plant Name	Boiler1	Allowances for Years 2000-2009 (A) Auction Reserve Deduction	(B) Repowering Deduction	(C)2 Total Annual Phase II	(D) 1993-1998 Auction Deduction	Years 2010 and Beyond (E) Auction Reserve Deduction	(F)3 Total Annual Phase II
WY	Laramie River	3	93	19	3,804	93	93	3,208
WY	Naughton	1	144	29	5,174	144	144	4,972
WY	Naughton	2	185	37	6,706	185	185	6,400
WY	Naughton	3	141	28	5,188	141	141	4,879
WY	Wyodak	BW91	513	103	18,214	512	512	17,731

1 "**" in the boiler identifier denotes a planned unit or a unit for which the boiler number is unavailable.

2 Column (C) is calculated as follows: Adjusted basic allowances for 2000 (not shown) - Column C - Conservation/Renewable reserve deduction - Column D + Additional basic (section 405(a)(3)) (not shown) + Total bonus (not shown)

3 Column (E) is calculated as follows: Adjusted basic allowances for 2010 (not shown) - Column G + Additional basic (section 405(a)(3)) (not shown)

4 The allowances shown in this table assume that these units fully qualify for section 405(i)(2). If they do not qualify, they will receive the following number of unadjusted basic allowances for years 2000-2009:

Anclote 1 - 10,345	Monroe 1 - 27,045	Monroe 3 - 26,021
Anclote 2 - 10,901	Monroe 2 - 27,778	Monroe 4 - 28,135

For 2010 and after they will receive the following number of unadjusted basic allowances for years 2010 and thereafter:

Anclote 1 - 10,343	Monroe 1 - 27,045	Monroe 3 - 26,021
Anclote 2 - 10,898	Monroe 2 - 27,778	Monroe 4 - 28,135

Please note that the unadjusted basic allowances will be adjusted to achieve the 8.9 million ton overall cap on basic allowances and, furthermore, that deductions for the Conservation and Renewable Energy Reserve, the Repowering reserve, and the Special Allowance Reserve will als be deducted from the unadjusted basic allowances.

3. Section 73.11 is removed and reserved.

4. Paragraph (b) of § 73.12 is removed and reserved.

§ 73.13 [Amended]

5. Paragraph (b) of § 73.13 is amended by removing the words ''§§ 73.16, 73.18'' and adding, in their place, the words ''§§ 73.18,''.

6. Section 73.16 is removed and reserved.

7. Section 73.19 is amended by revising paragraph (a)(5) and by removing and reserving paragraph (b) to read as follows:

§ 73.19 Certain units with declining SO_2 rates.

(a) * * *

(5) Its 1997 actual SO_2 emission rate is less than 1.2 lb/mmBtu as reported under part 75 of this chapter;

* * * * *

§ 73.21 [Amended]

8. Section 73.21 is amended by:

a. In paragraph (a) (including the equation) removing the words ''§ 73.11'' wherever they appear and adding, in their place, the words ''§ 73.10(b)''; removing the words ''Unit's Adjusted Basic Allowances'' wherever they appear and adding, in their place, the words ''Unit's Allowances at Table 2 Column C'';

b. In paragraph (b) removing the words ''§ 73.11(a) and (b)'' and adding, in their place, the words ''§ 73.10(b)'';

c. In paragraph (c)(1) (including the equation) removing the words ''Unit's Adjusted Basic Allowances'' and adding, in their place, the words ''Unit's Allowances at Table 2 Column C''; and

d. In paragraph (c)(2) (including the equation) removing the words ''Unit's Repowering Deduction'' and adding, in their place, the words ''Unit's Deduction at Table 2 Column B''.

9. Section 73.27 is amended by revising paragraphs (b)(2) through (b)(5) and (c)(2) through (c)(5) to read as follows:

§ 73.27 Special allowance reserve.

* * * * *

(b) Distribution of proceeds.

(1) * * *

(2) Until June 1, 1998, monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2000 through 2009 will be distributed to the designated representative of each unit listed in Table 2 according to the following equation:

$$\text{Unit Proceeds} = \left[\frac{\text{Unit's Deduction at Table 2 Column D}}{250{,}000}\right] \times \text{Total Proceeds}$$

(3) On or after June 1, 1998, monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2000 through 2009 will be distributed to the designated representative of each unit listed in Table 2 according to the following equation:

$$\text{Unit Proceeds} = \left[\frac{\text{Unit's Deduction at Table 2 Column A}}{250{,}000}\right] \times \text{Total Proceeds}$$

(4) [Reserved]

(5) Monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2010 and thereafter will be distributed to the designated representative of each unit listed in Table 2 according to the following equation:

$$\text{Unit Proceeds} = \left[\frac{\text{Unit's Deduction at Table 2 Column E}}{250{,}000}\right] \times \text{Total Proceeds}$$

(c) * * *

(2) Until June 1, 1998, allowances, for use in calendar years 2000 through 2009, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and sale (under subpart E of this part), will be reallocated to the unit's Allowance Tracking System account according to the following equation:

$$\text{Unit Allowances} = \left[\frac{\text{Unit's Deduction at Table 2 Column D}}{250{,}000}\right] \times \text{Allowances Remaining}$$

(3) On or after June 1, 1998, allowances, for use in calendar years 2000 through 2009, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and sale (under subpart E of this part),

will be reallocated to the unit's Allowance Tracking System account according to the following equation:

$$\text{Unit Allowances} = \left[\frac{\text{Unit's Deduction at Table 2 Column A}}{250{,}000}\right] \times \text{Allowances Remaining}$$

(4) [Reserved]

(5) Allowances, for use in calendar years 2010 and thereafter, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and sale (under subpart E of this part), will be reallocated to the unit's Allowance Tracking System account according to the following equation:

$$\text{Unit Allowances} = \left[\frac{\text{Unit's Deduction at Table 2 Column E}}{250{,}000}\right] \times \text{Allowances Remaining}$$

* * * * *

[FR Doc. 98–244 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 24, 26, 27, 90, and 95

[WT Docket No. 97–82, ET Docket No. 94–32, FCC 97–413]

Competitive Bidding Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the *Second Further Notice of Proposed Rule Making* (''NPRM''), the Commission seeks comment on a variety of proposed rules relating to its general competitive bidding rules for all auctionable services. The Commission believes that these proposals will assist its efforts to simplify and streamline its regulations in order to increase the overall efficiency of the competitive bidding process. These proposed rules are necessary to further the Commission's goals of simplifying and streamlining its regulations, and developing uniform auction rules and procedures for all future auctions. The intended effect of this action is to seek comment on proposed rules and procedures applicable to the Commission's spectrum auction program.

DATES: Comments are due on or before February 6, 1998. Reply comments are due on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Josh Roland or Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Further Notice of Proposed Rule Making* in WT Docket No. 97–82, ET Docket No. 94–32, FCC 97–413 which was adopted on December 18, 1997 and released on December 31, 1997. A copy of the complete item is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The complete *Second Further Notice of Proposed Rule Making* also is available on the Commission's Internet home page (http://www.fcc.gov).

Summary of Action:

I. Background

On December 18, 1997, the Federal Communications Commission (Commission) adopted a *Second Further Notice of Proposed Rule Making* seeking comment on a variety of proposals relating to its competitive bidding rules for all future auctions. These proposed rules are summarized below.

A. Rules Governing Designated Entities

1. Designated Entities

2. *Background.* Section 309(j)(4)(D) of the Communications Act provides that in prescribing rules for a competitive bidding system, the Commission shall ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' The statute further provides that for this purpose, the Commission shall consider the use of tax certificates, bidding credits and other procedures. In addition, pursuant to section 309(j)(4)(A), the Commission shall ''consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods,'' in order to ''disseminat[e] licenses among a wide variety of applicants, including small businesses, rural telephone companies, and small businesses owned by members of minority groups and women.'' Pursuant to these mandates, the Commission has adopted a number of measures, including entrepreneur blocks, bidding credits, reduced upfront payments/down payments and installment payments.

3. In addition, section 257 of the Telecommunications Act requires the Commission to identify and eliminate market entry barriers for small and entrepreneurial telecommunications businesses. The Commission is committed to completing a study to examine barriers encountered by minorities and women in the auctions process and in the secondary market for licenses. The Commission has initiated this process with regard to the study on secondary markets, and will initiate the auctions study expeditiously. The Commission will release the results in 1998.

4. Any measures that the Commission decides to adopt that give special preferences specifically to minority- and women-owned businesses must comply with recent Supreme Court decisions, as

discussed below. To that end, the Commission seeks comment on (1) whether there is a compelling governmental interest that would justify the use of preferences for minority-owned businesses and ''exceedingly persuasive justification'' for preferences for women-owned businesses; (2) what evidence supports the commenter's position on the issue; and (3) what measures, if any, could be narrowly tailored to withstand judicial review. The specific issues that commenters should address are discussed in more detail below.

5. *Discussion.*

a. Minority-based Designated Entity Provisions

6. As the Commission has recognized in the past, in *Adarand Constructors, Inc.* v. *Peña,* 515 U.S. 200 (1995), the Supreme Court established that governmental policies that take race into account are reviewed under a strict (as opposed to intermediate) scrutiny standard. The Commission tentatively concludes that, to the extent consistent with constitutional standards, the Commission should take steps to further the Commission's statutory mandate to ensure that minorities have the opportunity to engage in the provision of spectrum services pursuant to section 309(j)(4). The Commission seeks comment on how it can modify its designated entity provisions, consistent with the standards set forth in *Adarand.* In particular, the Commission seeks comment on what tools, such as bidding credits, might be used consistent with *Adarand.* In addition, the Commission seeks comment on whether it should limit any tools designed to ensure that minority-owned businesses have the chance to take part in the Commission's auction program to those minority-owned businesses that also qualify as small businesses. Commenters advocating the adoption of such measures should address the constitutional issue and present specific empirical evidence supporting their views.

7. Should the Commission determine that provisions for minorities would withstand strict scrutiny as required by *Adarand,* the Commission also seeks comment on appropriate eligibility standards for applicants seeking to qualify for minority-based provisions. For example, the Commission could specify that to qualify for any minority-based provisions, an applicant must be minority-controlled (*i.e.,* minorities must have *de facto* as well as *de jure* control of the applicant and must own more than 50 percent of the equity on a fully diluted basis) and meet the eligibility requirements set forth in 47 CFR 1.2110(b)(2). Alternatively, to ensure that any minority policies are reserved for businesses in which minorities have a substantial financial stake, as well as *de jure* and *de facto* control, the Commission could strictly define equity to require that minorities have the right to receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock and the right to receive dividends, profits, and other distributions from the business in proportion to their equity interests. This requirement would be similar to the eligibility standards for minority-owned businesses adopted but never implemented for the broadband PCS auctions, and to the eligibility standards recently proposed for the auction of pending broadcast license applications. In addition, the Commission seeks comment on alternate formulas that might be appropriate for determining eligibility for minority-based provisions.

8. The Commission also observes that the Office of Management and Budget (OMB) recently modified its standards for the classification of federal data on race and ethnicity. Specifically, OMB: (1) separated the category for Asian and Pacific Islander category into two categories—''Asian'' and ''Native Hawaiian or Other Pacific Islander''; and (2) changed the term ''Hispanic'' to ''Hispanic or Latino''. The Commission previously has used this standard to define the term ''minority'' for purposes of its designated entity provisions, and seeks comment on whether it should similarly amend the current definition in the Commission's rules.

b. Gender-based Designated Entity Provisions

9. The Commission seeks comment on whether special policies are warranted for female-owned applicants. The Commission notes that the constitutionality of its former practice of awarding comparative preferences for female ownership was not addressed by the Supreme Court in *Metro Broadcasting Inc.* v. *FCC,* 497 U.S. 547 (1990) and that the Commission suspended that practice following *Lamprecht* v. *FCC,* 958 F.2d 382 (D.C. Cir. 1992), which held, under ''intermediate'' scrutiny, that the Commission's gender preference was not shown to be substantially related to achieving program diversity and that it was thus unconstitutional. More recently, the Supreme Court has ruled that a state program, which makes distinctions based upon gender, must be supported by an ''exceedingly persuasive justification'' in order to withstand constitutional muster. *United States* v. *Virginia Military Institute,* 116 S.Ct 2264, 2274–76 (1996). The Commission seeks comment on whether there is sufficient evidence to justify special provisions for women-owned businesses under that standard.

10. As with minority-based provisions, the Commission tentatively concludes that to the extent consistent with applicable constitutional standards, it should take steps to further the Commission's statutory goal of making certain that women have the opportunity to provide spectrum-based services pursuant to section 309(j)(4). The Commission seeks comment on how it can modify its designated entity provisions, consistent with the standards set forth in recent court decisions. In particular, the Commission seeks comment on what tools, such as bidding credits, might be used consistent with judicial precedent. In addition, the Commission seeks comment on whether it should limit any tools designed to encourage participation in the Commission's auction program by women-owned businesses that also qualify as small businesses. Commenters advocating the adoption of such measures at this time should address the constitutional issue and present specific empirical evidence supporting their views.

c. Rural Telephone Company Provisions

11. In the Commission's recent report to Congress on the spectrum auctions, the Commission stated its belief that auctions have generally provided rural telephone companies with favorable opportunities. The Commission observed that, to date, rural telephone companies have won about 44 percent of the 123 rural Basic Trading Areas (BTA) licenses in the United States and noted some examples of rural telephone companies' successes in offering broadband PCS. In keeping with the Commission's duties under the Act, however, the Commission seeks comment on whether there are mechanisms that might further opportunities for rural telephone companies to provide spectrum based services.

2. Installment Payments

12. *Background.* The Commission is required by statute to provide incentives to ensure participation by small businesses and other ''designated entities'' when implementing its authority to conduct auctions, as set forth in section 309(j) of the Communications Act. Among other methods, allowing winning bidders to pay for their licenses using installment

plans has been one method the Commission has used to encourage small business involvement in the wireless marketplace. In the *Third Report and Order,* WT Docket No. 97–82, ET Docket No. 94–32, FCC 97–413 (released December 31, 1997) (''*Third Report and Order*''),[1] the Commission suspends the use of installment payments for the foreseeable future. In lieu of installment payments, the Commission has adopted a schedule of bidding credits applicable to small businesses that is higher than that which the Commission originally proposed.

13. *Discussion.* The Commission observed in the *NPRM* in this docket that small businesses have been successful in the auctions in which installment payments plans were offered. The Commission therefore seeks comment on ways in which it can provide an effective installment payment program while at the same time minimizing the concerns (*e.g.,* licensee default or difficulty meeting financial obligations to the Commission) that have led to the decision to suspend the use of installment payments for the present time. The Commission seeks comment, for example, on how the Commission can create an installment payment plan which fulfills the Commission's sometimes incongruent goals of encouraging only serious, financially qualified small business applicants to apply for licenses, ensuring the rapid provision of service to the public, and guaranteeing that the American public is reasonably compensated for the use of the spectrum being auctioned. The Commission also seeks comment on how the Commission might fashion an installment payment program that is consistent with the provision of the Balanced Budget Act that requires that all proceeds from certain future auctions be deposited in the United States Treasury not later than September 30, 2002. In this regard, the Commission notes that under most of the installment payment plans previously offered by the Commission, winning bidders have been permitted to pay for their licenses over the entire 10 year license term. If the Commission were to make installment plans available in the future, the Commission interprets this legislation as requiring that all payments of principal and interest for covered auctions be deposited in the United States Treasury by the statutory deadline for collection, which is approximately five years away. Finally, the Commission seeks comment on means other than bidding credits and installment payments by which the Commission might facilitate the participation of small businesses and other designated entities in the Commission's spectrum auction program. Commenters should provide sufficient detail to assist the Commission in fashioning a program based upon their comments.

14. The Commission also notes that under its current rules, winning bidders that are designated entities are not required to pay their second down payment until petitions to deny filed against them are dismissed or denied. In the interim, designated entity winning bidders for the same auction with no petitions filed against them are required to submit their second down payments earlier because their licenses are ready for grant. Because § 1.2110(e)(3)(i) of the Commission's rules provides that interest rates on installment payments will be based on the rate of U.S. Treasury obligations at the time of licensing, in previous auctions this has had the result of establishing different rates of interest on installment payments for winning bidders in the same auction. In the event the Commission reinstates installment payments in the future, the Commission seeks comment on whether it should establish the interest rate based upon the rate of U.S. Treasury obligations on the date of the close of the auction. The Commission also seeks comment on one aspect of its rules relating to the calculation of the total default payment owed where a winning bidder defaults on multiple licenses.

3. Attribution of Gross Revenues of Investors and Affiliates

15. *Background.* In the *NPRM,* the Commission proposed to adopt uniform rules and definitions for the attribution of gross revenues of investors and affiliates for all auctionable services. Some of the Commission's service-specific competitive bidding rules require that, in determining whether an applicant meets certain size-based eligibility requirements, the Commission consider, among other things, the gross revenues of certain investors in the applicant and the affiliates of attributable investors. These service-specific rules have established varying standards of attribution. For example, in both narrowband and broadband PCS, the gross revenues and total assets of an applicant, together with those of its affiliates and persons who hold an interest in the applicant or its affiliates, must be below a certain threshold in order for the applicant to qualify as a small business or entrepreneur. However, in order to avoid counting the revenue of all of these entities, the rules for each service provide different exceptions whereby the applicants can create control groups. For example, the Commission's broadband PCS rules provide two control group exceptions, while the Commission's narrowband PCS rules provide only one control group exception.

16. In the 900 MHz SMR service, to determine whether an applicant qualifies as a small business, the Commission attributes the revenues of parties holding partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of the applicant in conformance with the Commercial Mobile Radio Service (CMRS) spectrum cap attribution standard. In contrast, under the Commission's MDS rules, the Commission attributes the gross revenues of the applicant and all of the applicant's affiliates (as defined in 47 CFR 1.2110(b)(4)).

17. *Discussion.* In the *NPRM,* the Commission proposed to adopt a ''controlling interest'' standard, similar to that which the Commission has recently adopted in the Commission's rules for LMDS, as its general attribution rule for all future auctions. Under this standard, determination of eligibility for small business provisions would be made by attributing the gross revenues only of principals of the applicant who exercise both ''*de jure*'' and ''*de facto*'' control, and their affiliates. Nevertheless, the Commission seeks further comment on the controlling interest standard, and whether it is sufficient to calculate size so that only those entities truly meriting small business status qualify for bidding credits. The Commission also asks commenters whether alternate standards for attributing the gross revenues of investors and affiliates in an applicant would better meet the Commission's goals. Commenters should specify what alternatives could be applied.

18. The Commission notes that its intent in proposing this standard is to provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace. In the *NPRM,* the Commission preliminarily concluded that structuring the standard in this manner will not invite abuse. In this regard, the Commission seeks comment on whether this proposed standard would be strengthened by

[1] A summary of the Third Report and Order will be published in the **Federal Register** and a copy is available on the Commission's Internet home page.

imposing a minimum equity requirement (*e.g.,* 15 percent) that any person or entity identified as controlling must hold. Alternatively, the Commission asks whether it should not adopt a minimum equity requirement, but rather indicate only that an absence of equity would raise a question as to whether *de facto* control exists.

19. The Commission notes that for purposes of calculating equity held in an applicant, the Commission provides for full dilution of certain stock interests, warrants, *etc.* Finally, the Commission notes that it requires detailed reporting of all ownership interests as part of the general application requirement adopted in this *Third Report and Order,* and under the proposed controlling interest standard would apply the comprehensive affiliation rule to all investors in an applicant. Thus, passive interests that were otherwise non-attributable would be attributed if they are affiliates under this rule. Finally, the Commission notes that it reserves the right to conduct random audits of auction applicants and licensees in order to verify information provided regarding eligibility for small business provisions. The Commission seeks comment on the proposed rule.

B. Payment Issues

1. Default Payments

20. *Background.* Section 1.2104(g) of the Commission's rules provides that where a winning bidder defaults on a license the bidder becomes subject to a default payment equal to the difference between the amount bid and the winning bid the next time the license is offered by the Commission (net or gross, whichever is less) plus an additional payment equal to three percent of the subsequent winning bid or the amount bid (net or gross, whichever is less). In the past, where a bidder has defaulted on multiple licenses, this rule has been interpreted to require that the amount of the default payment be determined on a license-by-license basis, and then added together to determine the total default payment assessed.

21. *Discussion.* The Commission seeks comment on whether it should modify § 1.2104(g) to provide that where a winning bidder defaults on multiple licenses the default payment will be determined based upon the aggregate winning bid and the aggregate winning bid the next time the licenses are offered by the Commission. The Commission recognizes that assessing default payments through this method could significantly alter the amount of the default payment assessed under the Commission's rules. In this regard, the Commission seeks comment on whether this system could encourage insincere bidding and defaults since it could greatly reduce the effective penalty for a default. To the extent that a bidder is already intending to default on a license whose price at reauction is anticipated to exceed the initial bid price, the effective penalty for defaulting on additional licenses would be limited to three percent of the subsequent winning bid or the amount bid, whichever is lower. Since the potential defaulter would not be facing the full harm caused by the default on the additional license, the incentive for insincere bidding and default could be too great. Indeed, this modification could encourage speculation by encouraging a high bidder on a relatively high valued license who anticipates default to purposely bid and default on a relatively low valued license in order to lessen the default payment assessed under the Commission's rules. Finally, the Commission seeks comment on whether such a modification could function without nullifying the provision in § 1.2104(g) assessing an additional default payment equal to three percent of the subsequent winning bid or the amount bid, whichever is lower.

C. Administrative Filing Periods for Applications and Petitions to Deny

22. *Background.* Previously, the Commission has provided a 30-day period for filing of petitions to deny. A 30-day petition to deny period will be used for the upcoming paging and LMDS auctions. In the *Third Report and Order,* the Commission amends § 1.2108 of its rules to conform to the provisions in the Balanced Budget Act regarding the filing period for petitions to deny applications for initial licenses in auctionable services. Specifically, notwithstanding section 309(b) of the Communications Act, § 1.2108 as amended will provide that the Commission shall not grant a license less than seven days after public notice that long-form applications have been accepted for filing and that in all cases the period for filing petitions to deny shall be no shorter than five days.

23. *Discussion.* Although the Commission believes that in light of Congress' directive in the Balanced Budget Act a shortened petition to deny period is generally appropriate for future auctions, the Commission seeks comment on the appropriate length of a petition to deny period in light of this legislation. For example, the Commission seeks comment on whether there are instances in which the Commission should provide for a longer period than the minimums set forth in the statute for the filing of petitions to deny or for the grant of initial licenses in auctionable services (5 days and 7 days respectively). In particular, the Commission asks commenters to address whether auctions for specific services (*e.g.,* broadcast licenses) require longer periods for the filing of petitions to deny, and why this may be so.

D. Competitive Bidding Rules and Procedures for the Auction of General Wireless Communications Services (GWCS) Licenses

24. *Background.* On July 31, 1995, the Commission adopted the *Second Report and Order,* 60 FR 40712 (August 9, 1995), establishing auction and service rules for the General Wireless Communications Service (GWCS) in the 4660–4685 MHz band. Subsequently, several parties filed petitions for reconsideration of the *Second Report and Order* that remain pending before the Commission. The 1993 Omnibus Budget Reconciliation Act requires that 5 MHz of this spectrum be auctioned and licensed not later than August 9, 1998, and to comply with that deadline, the Commission has announced an auction for licenses in the GWCS as May 27, 1998.

25. *Discussion.* The Commission tentatively concludes that the part 1 rules it adopted in the *Third Report and Order* should apply to the auction of GWCS spectrum and specifically supersede the previously-adopted GWCS rules setting forth auction rules and procedures. In this regard, consistent with the Commission's decision in the *Third Report and Order,* the Commission notes that it would no longer offer installment payments as a means of financing small business participation in the GWCS auction, but instead would offer somewhat higher bidding credits. Employing part 1 rules for the GWCS auction furthers the Commission's goal of simplifying and streamlining all competitive bidding rules and procedures for future auctions. In addition, by applying the part 1 rules to the GWCS auction, the Commission assures that GWCS auction participants, like participants in other future auctions, benefit from the experience it has gained in the 15 spectrum auctions it has conducted to date. The Commission seeks comment on this tentative conclusion.

26. In light of the statutory deadline for the auction and licensing of GWCS spectrum, the Commission also

tentatively concludes to use its discretion to truncate the petition to deny period for the grant of licenses in the GWCS auction. The Commission believes that a shortened petition to deny period will assure issuance of the GWCS licenses by Congress' deadline. Notwithstanding section 309(d)(1) of the Communications Act, the Balanced Budget Act provides for shortened periods for the filing of petitions to deny and for the grant of licenses. Under this provision, the Commission is permitted to grant any application for authorization assigned under competitive bidding not earlier than 7 days following public notice that an application has been accepted for filing, and may specify a period of not less than 5 days for filing petitions to deny. The Commission seeks comment on this tentative conclusion.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in the *NPRM.* Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and objectives of, the proposed rules

28. This *NPRM* is being initiated to secure comment on additional issues relating to the general competitive bidding rules for all auctionable services that are necessary in light of the Balanced Budget Act of 1997. This *NPRM* seeks comment on the use of installment payments for future auctions, the controlling interest standard as a general attribution rule, the appropriate petition to deny period for future auctions, and whether the part 1 rules adopted in the *Third Report and Order* should apply to the auction of General Wireless Communications Services (GWCS) and supersede the previously adopted GWCS auction rules and procedures. The Commission believes that these proposals will further simplify and streamline the rules and regulations and increase the overall efficiency of the competitive bidding process.

B. Legal Basis

29. This action is taken pursuant to sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j).

C. Description and estimate of the number of small entities to which the proposed rule will apply

30. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA''). As discussed below, various wireless small entities may be affected by the proposed rules. Also, as noted, with a few exceptions, the Commission has not developed a precise definition of small entities for the various affected wireless services. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. In addition, the Commission incorporates by reference the more refined definitions of small entities pertaining to the broadband PCS, 220 MHz, paging, and SMR services. Generally, a small organization is ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were 85,006 such jurisdictions in the United States.

31. The rules proposed in this *NPRM* would allow all entities, including existing cellular, PCS, paging, and other small communications entities to obtain licenses in auctionable services through competitive bidding. These rules apply to future auctions, but will not apply to the initial auctions of licenses in the paging, 220 MHz, 800 MHz Specialized Mobile Radio (SMR), and Local Multipoint Distribution (LMDS) services. In estimating the number of small entities who may participate in future auctions of wireless services, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction winning bidders. The following is the Commission's estimate of the number of small entities who are current wireless licensees:

1. Estimates for Cellular Licensees

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of its evaluations and conclusions in this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, the Commission does not know the number of cellular licensees, since a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 804 small cellular service carriers.

2. Estimates for Broadband and Narrowband PCS Licensees

32. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This definition of ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in Blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs—defined for these auctions as entities together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

33. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

3. Estimates for 220 MHz Radio Services

34. Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies—an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Since this definition has not yet been approved by the SBA, the Commission will utilize the SBA definition applicable to radiotelephone companies. Given that nearly all radiotelephone companies employ no more than 1,500 employees, the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

4. Common Carrier Paging

35. The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies—an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 ''paging and other mobile'' carriers reporting that they engage in these services. Consequently, we estimate that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small businesses under the SBA definition.

5. Air-Ground Radiotelephone Service

36. The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

6. Specialized Mobile Radio licensees

37. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) ''Small entities,'' those with revenues of no more than $15 million in each of the three previous calendar years; and (2) ''very small entities,'' those with revenues of no more than $3 million in each of the three previous calendar years. The regulations defining ''small entity'' and ''very small entity'' in the context of 800 MHz SMR and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small and very small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small and very small entities.

7. Private Land Mobile Radio Licensees (PLMR)

38. The Commission has not developed a definition of small entities specifically applicable to PLMR licensees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by

the rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Any entity engaged in a commercial activity is eligible to hold a PLMR license, therefore, these rules could potentially impact every small business in the United States if PLMR licenses are subject to auction under these new auction rules.

8. Aviation and Marine Radio Service

39. Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to a small organization. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were 85,006 such jurisdictions in the United States. The Commission is unable at this time to make a meaningful estimate of the number of potential small businesses under these size standards. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this IRFA, the Commission estimates that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA.

9. Offshore Radiotelephone Service

40. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

10. General Wireless Communication Service (GWCS)

41. This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission has announced that an auction of 875 GWCS licenses will begin on May 27, 1998. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements

42. There are no additional reporting, recordkeeping, or other compliance requirements as a result of the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

43. The Commission proposes, pursuant to the Balanced Budget Act of 1997, to use competitive bidding for the award of any initial licenses or construction permits, unless excepted under section 309(j)(2), when mutual exclusivity exists among applications that have been accepted for filing. The Commission proposes to employ various mechanisms such as eligibility restrictions, spectrum caps, size limits on service areas, and providing for partitioning of service areas and disaggregation of spectrum in order to provide opportunities for avoiding mutually exclusive license applications. These different mechanisms are intended to help ensure that the marketplace for the various services continue to promote economic opportunity, provide incentives for the development and rapid deployment of new technologies, and to achieve efficient and intensive use of this spectrum.

44. The Commission observes that small businesses have been successful in the auctions in which installment payments plans were offered, and seeks comment on ways to provide an effective installment payment program while at the same time minimizing the concerns that have led to the decision to discontinue the use of installment payments for the present time. The Commission seeks comment on how to create an installment payment plan which fulfills the sometimes incongruent goals of encouraging only serious, financially qualified small business applicants to apply for licenses, ensuring the rapid provision of service to the public, and guaranteeing that the American public is reasonably compensated for the use of the spectrum being auctioned. The Commission also seeks comment on how to fashion an installment payment program that is consistent with the provision of the Balanced Budget Act of 1997 that requires that all proceeds from future competitive bidding be deposited in the United States Treasury not later than September 30, 2002. In addition, the Commission seeks comment on means other than bidding credits and installment payments to facilitate the participation of small businesses and other designated entities in the spectrum auction program.

45. With respect to general attribution rules, the Commission proposes to adopt a ''controlling interest'' standard as the general attribution rule for all future auctions. Under this standard, determination of eligibility for small business provisions would be made by attributing the gross revenues only of principals of the applicant who exercise both ''*de jure*'' and ''*de facto*'' control, and their affiliates. The Commission seeks comment on whether the standard is sufficient to calculate size so that only those entities truly meriting small business status qualify for bidding credits, or whether alternate standards for attributing the gross revenues of investors and affiliates in an applicant would better meet the Commission's goal to facilitate the participation of small businesses and other designated entities in the spectrum auction program. In addition, the Commission seeks comment on whether the controlling interest standard would be strengthened by imposing a minimum equity requirement.

46. The Commission believes that the provision in the Balanced Budget Act of 1997 requiring that interested parties have adequate time to develop business plans, assess market conditions and evaluate the availability of equipment necessary to make use of the specific spectrum to be auctioned is primarily intended to ensure that interested parties have adequate time to familiarize themselves with the rules and procedures to be employed in an auction prior to the application deadlines and start date of that auction. Nevertheless, it is unclear whether this legislation requires an additional opportunity for notice and comment prior to the issuance of detailed auction-specific information by the Wireless Telecommunications Bureau (Bureau). In order to comply with this provision of the Balanced Budget Act of 1997, and

to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of the auction, the Commission proposes to delegate to the Bureau the authority to seek comment on a variety of auction-specific issues prior to the start of each auction.

47. The Commission proposes that the Bureau seek comment on specific mechanisms relating to day-to-day bidding, the round structure, minimum opening bid/reserve prices, minimum acceptable bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, the stopping rules to be employed, and information relating to auction delay, suspension, or cancellation. The Commission also proposes that the Bureau afford interested parties a reasonable time (*e.g.*, seven days), in light of the start date of each auction and relevant pre-auction filing deadlines, to comment on these auction-specific issues. Also, the Commission proposes that the Bureau announce, at any time in the weeks leading up to the start date of each auction, any amendment or clarifications to the information contained in the auction-related public notices or the Bidder Information Package.

48. The Commission tentatively concludes that the Balanced Budget Act of 1997 establishes a presumption that a reserve price or minimum opening bid will be required for each auction, unless it is determined that such mechanisms are not in the public interest. Comment is sought on this conclusion. The Commission tentatively concludes that the new provision establishing reserve prices or a minimum opening bid does not call for traditional reserve prices; rather, it calls for an added protection that licenses will not be assigned at unacceptably low prices. The Commission also seeks comment on suggested methods by which a reserve price or minimum bid can be established in future auctions, in light of the tentative conclusion above.

49. The Commission believes that in light of Congress' directive in the Balanced Budget Act, a shortened time period for the grant of initial licenses in auctionable services, as well as a shortened petition to deny period, is generally appropriate for future auctions. The Commission seeks comment on the appropriate length of a petition to deny period in light of this legislation, and in particular, whether auctions for specific services require longer periods for the grant of initial licenses or for the filing of petitions to deny.

50. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes these provisions in the *NPRM* help meet those goals and promote efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

F. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

51. None.

B. Ex Parte Presentations

52. The *NPRM* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

C. Comments

53. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 6, 1998 and reply comments on or before February 17, 1998. In addition, a courtesy copy should be delivered to Josh Roland and Ken Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, Room 5202, Washington, DC 20554. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 21

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 26

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 27

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 95

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–297 Filed 1–6–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 4
Wednesday, January 7, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists; Meetings Schedule

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: At its organizational meeting December 19, 1997, in Chicago, Illinois, the Committee of Scientists agreed on its schedule of meetings for January and February and developed the agenda for the January 22–23 meeting, which will be held in Denver, Colorado. The purpose of the January meeting is for the Committee to discuss planning issues on the National Forests in the Rocky Mountain Region (Colorado, Kansas, Nebraska, South Dakota, and eastern Wyoming); to share information and ideas about Committee members' assignments; to review the National Forest Management Act and its history; to discuss scientific principles underlying land and resource management; and to conduct any other Committee business that may arise. The meeting is open to public attendance, and on January 22, beginning at 4 p.m., citizens may address the Committee to present ideas on how to improve National Forest System land and resource management planning. Citizens who wish to speak must register at the meeting before 4 p.m., and each speaker will be limited to a maximum of 5 minutes. Persons may also submit written suggestions to the Committee.

DATES: Meetings of the Committee are scheduled for January 22–23, 1998, in Denver, CO; February 12–13, in Seattle, WA; and February 24–25 in Atlanta, GA.

ADDRESSES: The January 22–23 meeting will be held at the Hyatt Regency, 1750 Welton Street, Denver, Colorado. On January 22, the meeting will begin at 9 a.m and end at 7 p.m. On January 23, the meeting will begin at 8 a.m. and end at 4 p.m.

Facilities for the February meetings have not been booked. Separate notice of the addresses and times for those meetings will be published later.

Written comments on improving land and resource management planning must be sent to the Committee of Scientists, Mail Stop 1104, Forest Service, USDA, Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Designated Federal Official to the Committee of Scientists, Telephone: 202–205–2494.

SUPPLEMENTARY INFORMATION: The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the members appointed to the Committee was published December 16, 1997, at 62 FR 65795. When the agenda and locations for the February meetings are known, the agency will publish a separate notice in the **Federal Register**.

Dated: January 5, 1998.

Robert C. Joslin,

Deputy Chief, National Forest Systems.

[FR Doc. 98–463 Filed 1–6–98; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: January 13, 1998; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c) (2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Thomas at (202) 401–3736.

Dated: January 5, 1998.

David W. Burke,

Chairman.

[FR Doc. 98–484 Filed 1–5–98; 2:44 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[Order No. 946]

Grant of Authority; Establishment of a Foreign-Trade Zone Merced, Madera and Fresno Counties, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of Supervisors of the County of Merced, California (the Grantee) has made application to the Board (FTZ Docket 55–97, 62 FR 36258, 7–7–97), requesting the establishment of a foreign-trade zone at sites in Merced, Madera and Fresno Counties, California, adjacent to the Fresno Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal**

Register, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 226, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 22nd day of December, 1997.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 98–280 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada; Notice of Rescission of Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of termination of antidumping duty administrative review.

SUMMARY: On October 29, 1997 the Department of Commerce (the Department) published in the **Federal Register** a notice of termination of the administrative review of brass sheet and strip from Canada covering imports of subject merchandise for the period January 1, 1993 through December 31, 1993. Due to a procedural oversight by the Department, the signature date of this notice of termination was October 21, 1997, one day prior to the date of the respondent's formal written request, which was submitted to the Department on October 22, 1997. In light of this procedural error, the Department is rescinding its termination of this review and is opening the administrative record of this proceeding for comments by interested parties on the question of termination of this review.

EFFECTIVE DATE: January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4474 or (202) 482–3814 respectively.

Applicable Statute and Regulations: Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1997.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty finding on brass sheet and strip from Canada on January 12, 1987 (52 FR 1217). On January 5, 1994, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty finding on brass sheet and strip from Canada (59 FR 564). On January 21, 1994, a manufacturer/exporter, Wolverine Tube (Canada) Inc., (Wolverine) requested an administrative review of its exports of the subject merchandise to the United States for the period of review January 1, 1993 through December 31, 1993. In accordance with 19 CFR 353.22(c), we initiated the review on February 17, 1994 (59 FR 7979). On or about October 17, 1997, Wolverine notified the Department by telephone of its intent to request termination of this review. The Department then prepared a notice of termination for the **Federal Register** pending receipt of Wolverine's formal written request. This written request was dated and received by the Department on October 22, 1997. The notice of termination was published in the **Federal Register** on October 29, 1997. However, due to a procedural oversight, the signature date of the notice was October 21, 1997, one day prior to actual receipt of the written request for termination. In the interest of procedural integrity, the Department is hereby rescinding its termination of this review in order to afford interested parties the opportunity to comment as to whether this review should be terminated or not. Thus, interested parties may submit comments of on the issue of termination of this review only, within 10 calendar days of publication of this notice. Interested parties may submit rebuttal comments beginning on the eleventh calendar day after publication of this notice and no later than the twentieth day after publication of this notice. The Department will then review any comments submitted and make a determination as to whether or not this review should be terminated.

Dated: December 30, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 98–277 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of certain cased pencils from the People's Republic of China.

SUMMARY: On September 5, 1997, the Department of Commerce published the preliminary results and partial rescission of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China covering the period of review of December 1, 1995, through November 30, 1996 (62 FR 46945). We gave interested parties an opportunity to comment on our preliminary results. We received one comment from the petitioners, the Pencil Section of the Writing Instrument Manufacturers Association and its members (domestic producers of pencils). We received no other comments from respondents or other interested parties. Based on our analysis of the comment received, there are no changes to these final results of review from the preliminary results of review, and the review indicates the existence of a country-wide dumping margin of 53.65 percent for this period.

EFFECTIVE DATE: January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Dulberger or Irene Darzenta, AD/CVD Enforcement Group II, Office Four, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–5505/6320.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the

Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to the regulations set forth at 19 CFR part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this review are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, etc.) in any fashion, and either sharpened or unsharpened (pencils). The pencils subject to this review are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-case crayons (wax), pastels, charcoals, and chalks.[1] Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background

The antidumping duty order on pencils from the People's Republic of China (PRC) was published on December 28, 1994 (59 FR 66909). On September 5, 1997, the Department published in the **Federal Register** the preliminary results of its review of this order for the period of review (POR) December 1, 1995 through November 30, 1996. In our preliminary results of September 5, 1997, we rescinded the review as to the companies which reported that they had no shipments of subject merchandise during the POR (*i.e.,* China First Pencil Company, Ltd. (China First) and Guangdong Provincial Stationery & Sporting Goods Import and Export Corporation (Guangdong)). With respect to these companies, we confirmed by letter from the U.S. Customs Service dated August 19, 1997, that the only subject merchandise exported during the POR was merchandise excluded from the order (*i.e.,* merchandise manufactured by the factories upon which zero margins in the less-than-fair-value investigation were based).[2] *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China,* 59 FR 66909 (December 28, 1994). Therefore, these final results apply only to the PRC-wide entity, which includes the remaining respondents in this review which did not reply to our questionnaire and show that they are entitled to a rate separate from the PRC entity. In response to an opportunity to comment on our preliminary results, the petitioners submitted a comment on October 6, 1997. We receive no other comments from respondents or other interested parties.

Analysis of Comment Received

Comment

Petitioners assert that the Department's proposal to use the recalculated petition rate as the facts available (FA) is incorrect. Petitioners assert that agency practice and the applicable statutory provisions require that the FA charges be reliable and relevant. According to petitioners, the recalculated petition rate applied by the Department in the preliminary results fails to meet the reliability requirement because it is based on several legal errors. According to the petitioners, these errors include the selection of the surrogate market economy country to determine surrogate wood costs, the failure to exclude data which were untimely submitted, the failure to determine a surrogate value for factors of production (such as the transportation of raw materials from suppliers to producers and the transportation of pencils from producers to the ports of exportation), the failure to take into account information determined during the investigation concerning actual general expenses for the Indian pencil industry, and several errors the Department committed during the remand determination that render the surrogate valuation of Chinese pencil slats, and thus the ''PRC rate'' which was premised on such valuation, unreliable.

Department's Position

We disagree with the petitioners. Where the Department must rely on FA because a respondent failed to cooperate to the best of its ability in responding to a request for information, section 776(b) of the Act authorizes the Department to make an inference adverse to the interests of that respondent in choosing FA. Section 776(b) of the Act also authorizes the Department to use as adverse FA information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. *See also,* Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd Sess. 870), providing that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA, at page 870, clarifies that the petition is ''secondary information.''

The Department, as indicated in the preliminary results of review, has decided to use the petition in the LTFV investigation as the basis for adverse FA. The petition rate was ''recalculated'' for the first time during the LTFV investigation. Later, in litigation arising out of that investigation, we requested that the CIT remand to us two issues for further consideration: (1) Basswood prices; and (2) valuation of slats and logs. In performing this remand, the Department revised certain calculations; these revisions led to a change in the recalculated petition rate (from 44.66 percent to 53.65 percent). The newly recalculated petition rate was then affirmed by the CIT in *Writing Instrument Manufacturer's Ass'n Pencil Section, et al.,* v. *United States,* Slip Op. 97–151 (CIT November 13, 1997). Consistent with a recent ruling by the U.S. Court of Appeals for the Federal Circuit in an unrelated action, we consider it to be inappropriate to use as FA a rate we have determined to be inaccurate. *See D&L Supply* v. *United States,* 1997 WL 230117, at 2 (Fed. Cir. May 8, 1997). We have therefore used the newly recalculated petition rate as the basis of FA.

[1] On September 15, 1997, the Department determined that ''Bensia'' pencils imported by Nadel Trading Corporation from the PRC are also excluded from the scope of the order. *See Final Scope Ruling—Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China—Request by Nadel Trading Corporation for a Ruling on the Bensia Pencil.*

[2] China First exports of merchandise produced by China First itself were originally excluded from this order, and thus no suspension of liquidation of such entries was made prior to or during this POR (*i.e.,* 1995–1996). However, in litigation brought to challenge the *Final Determination of Sales at Less Than Fair Value (LTFV),* the Department issued a remand determination which was subsequently affirmed by the U.S. Court of International Trade (CIT). *See Writing Instrument Manufacturers Ass'n Pencil Section, et al.* v. *United States,* Slip Op. 97–151 (CIT November 13, 1997). In this remand determination, the Department determined, among other things, that merchandise exported and produced by China First is, in fact, covered by the order. Therefore, for entries of merchandise exported and produced by China First and entered on or after November 23, 1997, there will be suspension of liquidation pending final and conclusive disposition of the remand results. *See also* the Department's *Notice of Court Decision: Certain Cased Pencils from the People's Republic of China,* 62 FR 65243 (December 11, 1997).

There is no basis on the record of this case to question the probative value of the newly recalculated petition rate and we therefore consider it to be corroborated. Petitioners' claims against this rate, which are based on evidence which is contained in the administrative record of the LTFV investigation, are not properly before the Department in this segment of the proceeding.

Final Results of the Review

Based on our analysis of this comment, we have determined that no changes to the preliminary results are warranted for purposes of these final results, and a margin of 53.65 percent exists for the PRC entity for the period December 1, 1995 through November 30, 1996. This rate applies to all exports of pencils from the PRC other than those produced and exported by China First (because China First's exports produced by China First and entered during the POR were excluded from the order), those produced by Shanghai Three Star Stationery Company, Ltd. (Three Star) and exported by Guangdong (because Three Star's exports produced by Guangdong were also excluded from the order), and those exported by Shanghai Foreign Trade Corporation (SFTC) (an exporter which was previously determined to be entitled to a separate rate and for which the petitioners withdrew their request for this administrative review). The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Weighted average margin percent
PRC Rate	53.65

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) No cash deposit is required for entries of subject merchandise both produced by Three Star and exported by Guangdong; (2) the cash deposit rate for merchandise both produced and exported by China First is unaffected by this notice (*see* footnote 2, above); (3) the cash deposit rate for SFTC will be 8.31 percent (based on the December 28, 1994 antidumping duty order (59 FR 66909)); (4) the cash deposit rate for merchandise exported by China First and produced by any manufacturer other than China First, for merchandise exported by Guangdong and produced by any manufacturer other than Three Star, and merchandise exported by all other PRC exporters, will be the PRC rate of 53.65 percent; and (5) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of its supplier. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Upon completion of this review, we will direct the U.S. Customs Service to assess an ad valorem rate of 53.65 percent against the entered value of each entry of subject merchandise during the POR for all firms except those firms excluded from the order or entitled to a separate rate.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22

Dated: December 22, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–278 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815]

Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty administrative review.

SUMMARY: On December 19, 1995, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea. This review covers two manufacturers/exporters of the subject merchandise to the United States and the period August 18, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Rast (Dongbu), Alain Letort (Union), or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3793 or fax (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Commerce Department published in the **Federal Register** (58 FR 37176) the final affirmative antidumping duty determination on certain cold-rolled carbon steel flat products from Korea, for which we published an antidumping duty order on August 19, 1993 (58 FR 44159). On August 3, 1994, the Department published the ''Notice of Opportunity to Request an Administrative Review'' of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). We received a request for an administrative review from Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union''). We initiated the administrative review on September 8, 1994 (59 FR 46391).

In a letter dated February 1, 1995, petitioners formally requested that the

Department consider Union and Dongkuk Industries Co., Ltd. (''DKI''), which was not a respondent initially, as related parties and ''collapse'' them as a single producer of cold-rolled carbon steel flat products. On May 22, 1995, the Department decided to ''collapse'' Union and DKI for purposes of this review. (See the Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, dated May 22, 1995.) Unless otherwise indicated, all references to Union in this notice include DKI.

On December 19, 1995, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea (60 FR 65284). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The period of review (''POR'') is August 18, 1993 through July 31, 1994. This review covers sales of certain cold-rolled carbon steel flat products by Dongbu and Union.

Verification

As provided in section 776(b) of the Act, we verified information provided by Dongbu and Union using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union''), exporters of the subject merchandise (''respondents''), and from Bethlehem Steel Corporation, U.S. Steel Group—a Unit of USX Corporation, Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company (''petitioners''). Petitioners requested a public hearing, but subsequently withdrew their request in a timely manner.

Petitioners' Comments

Comment 1

Petitioners argue that the Department should use alternative information on the record to determine the market value of transaction handling fees that Dongbu paid to a related party for imported raw materials. Petitioners contend that Dongbu did not provide substantive evidence to support its claim that the transfer prices paid to the related party were at arm's-length or at least equal to the related party's actual costs for providing the services. Moreover, the petitioners argue that since the Department was unable to test the transfer price at verification, the possibility exists that Dongbu may have selectively structured these related-party transactions to maximize adjustments that would lower Dongbu's production costs of the subject merchandise. Thus, the petitioners state that the Department should make an adverse inference and increase the costs of raw materials based on the comparison of similar arm's-length transaction handling fees charged by unrelated parties that Dongbu's U.S. sales affiliate (''DBLA'') used to import subject merchandise into the United States.

Dongbu contends that there is no basis for adjusting its raw material costs to account for transaction fees paid to a related party as suggested by the petitioners. Dongbu states that the services this related party provides to the company are not of any tangible economic value other than lending its internationally recognized name to the transaction. Dongbu additionally states that the arrangement between the related party and itself simply reflects an intra-company transfer that benefits the related party and its shareholders. Therefore, Dongbu believes that the Department should accept the submitted transaction fees that the related party charged the company.

Department's Position

For the final results, we accepted Dongbu's submitted transaction fees that were paid to a related party. The transaction fees in question were for assistance in handling and processing the related paperwork created by the importation of the material. *See* Dongbu's February 21, 1995 submission at page 12. The value of the service was based on a constant percentage of the acquisition price of the input. Dongbu was unable to substantiate that the submitted transaction fees reflected the market value of the service provided. At verification, company officials stated that they did not obtain similar services for the importation of inputs from any other party, nor did the related party provide this service to any other entity. *See* Cost Verification Report of Dongbu Steel Co., Ltd. (May 19, 1995) at page

12. However, after further review of information on the record, we have concluded that the transfer prices submitted by Dongbu did fairly represent the amount usually reflected for such services. This determination was made by comparing Dongbu's submitted transaction fees (expressed as a percentage of the purchase price) to the *weighted-average* cost (also expressed as a percentage of the purchase price) of similar arm's-length transaction fees charged by unrelated parties that DBLA used to import subject merchandise into the United States. This comparison showed that the submitted transaction fees were above the weighted-average amount charged by unrelated parties. We therefore accepted the submitted transaction fees that were paid to a related party because they reasonably reflected a market value.

Comment 2

Petitioners contend that the costs submitted by Dongbu for its research and development (''R&D'') department, raw material department, quality control department, and procurement department should be included in Dongbu's manufacturing costs rather than in its general expenses. The petitioners argue that Dongbu's submitted description of the functions performed by these departments sufficiently demonstrates that they are manufacturing costs. They add that neither the cost verification report nor the accompanying exhibits contained any indication that Dongbu attempted to provide additional explanations, documentation, or schedules to support its claim that the expenses were general in nature. Therefore, the petitioners believe that the Department should include all general expenses that are not attributable to Dongbu's sales department in the company's cost of manufacturing.

Dongbu believes that its submitted classification of these departmental costs as general expenses is appropriate. The company argues that these costs were classified as general expenses on its audited income statement because they benefit the entire company as a whole. This fact was confirmed by the Department at verification. Furthermore, the company argues that reclassifying these as manufacturing costs would have an inconsequential effect, if any, on its cost of production (''COP'').

Department's Position

We agree with respondent. In this specific case, we are satisfied that the costs in question were properly classified as general expenses. For the final results, we accepted Dongbu's inclusion of costs from its R&D department, raw material department, quality control department, and procurement department as general expenses. At verification, the Department reviewed Dongbu's source documentation and noted that these costs were general in nature and related to all merchandise sold during the POR. Furthermore, we noted that these expenses were reported as general expenses on the company's audited income statement and not as a part of its cost-of-sales. Nor were these costs included as part of the inventoried costs reported in Dongbu's finished product inventory ledgers. *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37191 (July 9, 1993).

Comment 3

Petitioners argue that the Department should include foreign exchange losses among Dongbu's manufacturing costs to ensure that the cost of production is calculated accurately and that the statutory minimum amounts for general expenses and profit are properly computed for constructed value (''CV''). The petitioners state that it is the Department's normal practice to include foreign exchange gains and losses related to the production of subject merchandise in the cost of manufacturing and not as G&A expenses.

Dongbu believes that its net foreign exchange losses were appropriately submitted as general expenses and not as costs of manufacturing. Dongbu states that it recognizes that it is the Department's normal practice to include foreign exchange gains and losses related to material purchases in the cost of manufacturing. However, Dongbu states that its submitted methodology is consistent with the classification of those expenses on its audited income statement, and that such an adjustment would needlessly result in a deviation from the company's normal accounting records. Furthermore, Dongbu argues that an adjustment to reclassify the costs is needless.

Department's Position

We agree, in part, with both petitioners and respondent. Foreign exchange losses arising from the purchase of raw materials normally should be included in material cost because this is a component of the cost of manufacturing. However, in this particular instance we have not reclassified these losses from general expenses to cost of manufacturing as it would have no impact on the submitted cost of production. *See* 19 CFR § 353.59(a). The slight increase in manufacturing costs the reclassification creates is offset by coinciding decreases in G&A and financing costs. *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea,* 54 FR 15467, 15475 (March 23, 1993).

Comment 4

Petitioners contend that the Department should deny all of the claimed miscellaneous income offsets (*e.g.,* dividends, gains on investments) that were applied against Dongbu's submitted G&A costs. The petitioners argue it is not the Department's practice to allow a reduction of G&A costs unless it can be substantiated that the offsetting income can be tied to specific expenses related to production. The petitioners contend that Dongbu failed to do both of these steps and, therefore, the Department should deny all of Dongbu's claimed offsetting adjustments to G&A costs.

Dongbu contends that it properly offset G&A costs with its various miscellaneous income items. Dongbu states that it submitted a complete list of miscellaneous income items used to offset G&A costs and that the Department reviewed each of these items during verification. Therefore, the company believes that the Department should ignore the petitioners' request and allow the miscellaneous income offsets to G&A costs.

Department's Position

For the final results, we continue to disallow certain non-production-related income offsets to Dongbu's G&A costs. At verification, we reviewed source documentation and obtained explanations from company officials on all the income items that were used to offset Dongbu's G&A expense. We disallowed certain offsetting income from the calculation of G&A expense because Dongbu could not substantiate that they related to the production of subject merchandise. Consequently, the offsetting revenue we disallowed included income received from investments (*e.g.,* dividends, gain on investments) because it related to investments, and not to the production of subject merchandise. *See Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea,* 59 FR 58826, 58828 (November 15, 1994).

Comment 5

Petitioners contend that the Department should exclude Dongbu's duty payments from the calculation of the company's G&A and interest expense factors. According to the petitioners, the addition of the duty to the cost-of-sales figure inappropriately overstates the figure. The petitioners argue that Dongbu's duty drawbacks represent a refund of import duties incurred in the production of finished merchandise that is subsequently exported. Therefore, the cost-of-sales figures in Dongbu's audited income statements, which is net of import duties refunded on certain export sales, accurately represented Dongbu's final cost of manufacturing. Petitioners continue this argument by stating that duties paid on imports used to produce merchandise sold in Korea are not refunded, and are included in both the net cost of sales and Dongbu's domestic sales price. Thus, using the net cost of sales to allocate general expenses and interest results in an appropriate comparison of prices and costs that reflect import duties.

Dongbu believes that it properly increased its cost-of-sales figure to include the duty in order to calculate G&A and interest expense factors. Dongbu contends that the increase to its cost-of-sales is necessary in order to ensure comparability. Dongbu notes that its audited income statement cost-of-sales figure is net of duty drawback, while its submitted costs of manufacturing figures include the duty because the Department requested that it be submitted in this manner. Therefore, the respondent states that any G&A or interest factor that is applied to its duty-inclusive cost of manufacturing must itself be determined on a duty-inclusive basis.

Department's Position

For the final results, the Department added the import duties paid by Dongbu to the cost of sales, which was used as the denominator in calculating G&A and interest expense factors. The cost of sales in Dongbu's audited income statement was net of import duty drawback, while the Korean and U.S. cost of manufacturing submitted by Dongbu included the cost of import duties. Thus, the cost of sales and the cost of manufacturing were not reported on a consistent basis. Therefore, Dongbu appropriately determined the interest and G&A factor on a duty-inclusive basis because the submitted cost of manufacturing included import duties.

Comment 6

Petitioners assert that the Department's analysis must account for the difference between U.S. sales by Dongbu and its U.S. sales affiliate, DBLA. They argue that the Department is in error in its treatment of DBLA's and Dongbu's sales and requests that DBLA's sales be treated as exporter's sales price (''ESP'') sales. Petitioners note that Dongbu makes sales to the United States through three separate and distinct channels: directly to customers in the United States; through related and unrelated trading companies in Korea; and through its affiliate in the United States, DBLA, which purchases subject merchandise from Dongbu and resells it to unrelated customers in the United States. Petitioners assert that Dongbu is incorrect in claiming that sales made through each of these channels are purchase-price sales. They state that Dongbu's contention implies that if sales through each of these channels are treated as such, the U.S. prices calculated by the Department will represent prices at the same point in the chain of commerce in all cases, and thus implying that the charges by DBLA to the first unrelated customer in the United States represent the arm's-length prices that Dongbu would charge for the same merchandise if sold directly to an unrelated U.S. customer, without the involvement of DBLA. Petitioners claim that Dongbu's own sales data indicate that there is a systematic and significant difference between Dongbu's and DBLA's pricing structure which is the result of the fact that DBLA's involvement in the sale of subject merchandise results in significant costs which are included in the prices it charges its U.S. customers.

Petitioners also argue that because DBLA's selling prices are distinct from Dongbu's, the Department must analyze DBLA's sales differently from Dongbu's sales in order to ensure consistency with the fundamental purpose of the Tariff Act regarding the calculation of United States price. They argue that the Tariff Act identifies two types of U.S. sales, purchase price (''PP'') and ESP, and mandates different adjustments to each so that United States price is reconstructed at the same point in the chain of commerce regardless of whether a U.S. affiliate of the manufacturer or exporter is involved in the transaction. Citing 19 U.S.C. 1677a(b), petitioners contend that the Tariff Act defines purchase price as the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from either a reseller, manufacturer, or producer of the merchandise for exportation to the United States. Conversely, say petitioners, ESP is defined as the price at which merchandise is sold or agreed to be sold in the United States, prior to or after importation by or for the account of the exporter. *See* 19 U.S.C. 1677a(c). Thus, ESP is typically used when an affiliate of the manufacturer or exporter imports merchandise into the United States. Also, petitioners cite *Smith Corona Group* v. *United States*, 713 F.2d 1568, 1571–72 (Fed. Cir. 1983), in arguing that when a U.S. affiliate of a foreign respondent imports merchandise in question, all costs and expenses incurred by the affiliate must be deducted from the affiliate's resale price in order to derive a United States price (''USP'') that reflects the price that the merchandise would command in an arm's-length transaction. They further state that this is the case whether the sales are from the importer to an independent retailer or directly to the public, as if the affiliate had no role in the transaction. Petitioners note that DBLA's role in selling subject merchandise results in selling prices that are distinct from Dongbu's prices for the same product, and that as a result, DBLA's role in selling subject merchandise creates the type of bias that is addressed by the provisions of the Tariff Act regarding United States price.

Petitioners also contend that Dongbu's sales through DBLA do not meet the statutory definition of purchase price. They argue that the Department utilizes a three-part test to determine whether ESP or purchase price should be used to determine USP when the sale is made prior to the date of importation; and the focus must be on the third factor in this test; that is, that if the related party in the United States only acts as a conduit between the first unrelated purchaser and the seller, the resulting sale is a sale for export to the United States. Petitioners contend, however, that before the Department can accurately determine that the related party is just a processor of documentation, there must be evidence on the record supporting that conclusion. They argue that documents submitted by Dongbu, which include DBLA's sales contracts and production order requests, do not, by themselves establish that Dongbu sets the essential terms of sale in Korea. Petitioners maintain, rather, that there is no documentary evidence in the record in support of Dongbu's contention. Citing to *Creswell Trading Co., et al.* v. *United States*, 15 F.3d 1054 (Fed. Cir. 1994) (''*Creswell*''), petitioners claim that Dongbu has the burden of producing information that proves its point, which it has not done; and in the absence of such information, the Department cannot conclude that the indirect PP sales at issue were made in Korea by Dongbu for exportation to the United States. Instead, petitioners conclude that the Department must determine that the sales were made in the United States by DBLA, and that they must be treated as ESP sales.

Petitioners further argue that the price at which DBLA sells subject merchandise to the unrelated purchaser is different from the price at which DBLA purchases it from Dongbu. They contend that these prices reflect the fact that DBLA performs significant selling activities in the United States which require the Department to treat the sales in question as ESP sales. Petitioners note also that DBLA extends credit to certain customers by permitting them to delay payment for subject merchandise; that DBLA identifies customers, negotiates prices, and provides some warranty-related services; and that DBLA is engaged in marketing activities that include development of downstream applications for subject merchandise. Petitioners contend that another significant selling function performed by DBLA is the posting of cash deposits of antidumping and countervailing duties on behalf of its U.S. customers. They argue that in a typical purchase price transaction, the U.S. customer, as the importer of record, would be required to deposit cash deposits with the U.S. Customs Service upon importation of the merchandise, resulting in additional costs. In ESP transactions, however, the customer is relieved of this burden and of the risks of uncertain future liabilities. Petitioners contend that DBLA's selling activities can be demonstrated in several ways. First, the activities performed by DBLA are significant in the context of the totality of activities required to sell subject merchandise. In other words, DBLA performs all of the functions required to sell subject merchandise in the United States. Second, the significance of DBLA's selling activities, and the economic benefit these provide to DBLA's customers, is reflected in DBLA's prices. Finally, petitioners cite declarations made by DBLA on Customs Form 7501 which indicate that it was more that a processor of sales related documentation.

Respondent counters these arguments by stating that Dongbu's sales through DBLA meet the statutory definition of PP sales, and that petitioners even concede that Dongbu satisfies the first two prongs of the test: (1) Dongbu's sales through DBLA are shipped directly from Dongbu to the unrelated buyer without being introduced into DBLA's inventory, and (2) such shipment is customary in the industry. Respondent notes that the sole issue thus raised by petitioners is whether Dongbu USA satisfies the third prong of the test (*i.e.,* does Dongbu USA act solely as a processor of sales-related documentation and a communication link with its unrelated U.S. buyers). Respondent contends, however, that verification reports and associated documents confirm that sales through DBLA meet the third requirement of the test, and that DBLA played only a limited role as a processor of sales related documentation and as a communications link to the customer.

Respondent argues that all of the selling activities carried out by Dongbu USA in connection with these sales are within the range of activities determined by the Department and the Court of International Trade (''CIT'') to be consistent with purchase price classification. Respondent notes further that petitioners make the same argument here that they made during the original less-than-fair-value (''LTFV'') investigation with respect to sales of cut-to-length plate made by Dongkuk Steel Mill Co., Ltd. through its affiliated selling agent in the United States. In that case, as with Dongbu, the U.S. affiliate was responsible for payment of customs duties and brokerage and handling charges, invoicing and collecting payment, and financing accounts receivable. Respondent states that the Department in that case determined that all of the functions identified by petitioners were within the scope of activities consistent with a purchase price classification. *See* letter from Morrison & Foerster to the U.S. Department of Commerce (June 8, 1995) at 11–13; concurrence memorandum in *Cut-to-Length Carbon Steel Plate from Korea,* Inv. A–580–817 (January 20, 1993) at 13. Respondent notes that DBLA facilitates the sales by processing the documents needed to ensure that the merchandise is delivered in accordance with the negotiated sales terms: that is, delivery to the customer after clearance through U.S. Customs and payment of brokerage and related charges. In detailing these functions, respondent argues that all of the selling activities carried out by DBLA in connection with these sales are within the range of activities determined by the Department to be consistent with purchase price classification in previous cases.

Regarding petitioners' argument that the Department should classify sales through DBLA based upon comparative pricing patterns, respondent counters that there is no legal or factual basis for reclassifying these sales as ESP. Respondent contends that selling functions, not selling prices, are the basis for the Department's classification of sales as purchase price or ESP. With regard to Dongbu's sales through DBLA, respondent argues that the Department must consider DBLA's selling functions in connection with the fact that these products are sold to the unrelated U.S. customer on an ex-dock duty-paid basis and must thus be delivered to the possession of the customer after clearance through U.S. Customs. Respondent notes that in this case, Dongbu has simply transferred these routine selling functions to a related selling agent in the United States, and that the substance of the transaction is not changed, which is that they are purchase price rather than ESP.

Department's Position

We have determined that purchase price is the appropriate basis for calculating USP. Typically, whenever sales are made prior to the date of importation through a related sales agent in the United States, we conclude that purchase price is the most appropriate determinant of the USP if the following factors exist: (1) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; (2) direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers. *See, e.g., Certain Stainless Steel Wire Rods from France: Final Determination of Sales at Less that Fair Value,* 58 FR 68865, 68868–9 (December 29, 1993); *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 50343–4 (September 27, 1993). This test was first developed in response to the Court of International Trade's decision in *PQ Corporation* v. *United States,* 652 F. Supp. 724, 733–35 (CIT 1987). It has also been used to uphold indirect purchase-price transactions involving exporters and their U.S. affiliates. *See, e.g., Zenith Electronics Corp.* v. *United States,* Consol. Ct. No. 88–07–00488, Slip Op. 94–146 (CIT 1994).

We disagree with petitioners' argument in citing to *Creswell* that Dongbu has not met the burden of producing information that demonstrates that the related party in the United States functions only as a processor of documentation. Dongbu has placed information on the record which we have verified describing the functions of its related party. Furthermore, the Department has recognized and classified as indirect PP sales transactions involving selling activities similar to those of DBLA's in other antidumping proceedings involving Korean manufacturers and their related U.S. affiliates. *See, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 57 FR 42942, 42950–1 (September 17, 1992). In the present review, we found that: (1) Dongbu's sales though DBLA, its related sales agent in the United States, are shipped directly from Dongbu to the unrelated buyer without being introduced into DBLA's inventory; (2) such shipments are the customary channel of distribution for the parties involved; and (3) DBLA performed limited liaison functions in the processing of sales-related documentation and a limited role as a communication link in connection with these sales.

When all three of the criteria described above are met, we consider that the exporter's selling functions have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We determine that DBLA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales. Furthermore, we conclude that DBLA's role in the payment of cash deposits of antidumping and countervailing duties, extension of credit to U.S. customers, the processing of certain warranty claims, and project development does not involve the development of downstream applications for subject merchandise; rather, DBLA's role is not in consistent with purchase price classification and is a relocation of routine selling functions from Korea to the United States.

Comment 7

According to petitioners, the Department is required by law to deduct the cost of ''actual'' antidumping and countervailing duties from USP when the record demonstrates that those costs are included in the prices paid by the first unrelated purchaser. Petitioners contend that these duties are costs to Dongbu and must be deducted from the price paid by the first unrelated purchaser in order to obtain a fair comparison between USP and foreign market value (''FMV'').

Petitioners assert that the statute provides authority for deducting the cost of actual antidumping and countervailing duties incorporated in the price used to establish USP. Citing 19 U.S.C. § 1677a(d)(2)(A), they argue that USP shall be reduced by ''the amount, if any, included in such price which is attributable to additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise into the United States.'' The costs of antidumping and countervailing duties thus fall within the scope of this provision as costs, charges, and expenses or as U.S. import duties. The former, petitioners note, is a subset of the latter, and as a matter of law they must be deducted from the price to the first unrelated purchaser. The also argue that the statute provides that USP shall be increased by the amount of any countervailing duty imposed to offset an export subsidy.

According to petitioners, in order to prevent double-counting, the Department must deduct the full amount of the countervailing duties paid by Dongbu for those entries covered by the first and second annual reviews of the countervailing duty order. They claim that none of the arguments for not deducting the estimated antidumping duties applies in the case of the countervailing duty payments. First, petitioners argue that Dongbu has presented evidence that DBLA paid those duties and that they have an impact on the price. Second, they contend, there is no danger of double-counting since the countervailing duties are not paid to offset past price discrimination. In this case, the countervailing duties are paid to offset domestic subsidies and have nothing to do with Dongbu's price discrimination practices. Thus, petitioners assert that the countervailing duties are a cost separate from the payment of antidumping duties and should be treated as normal customs duties. Also, petitioners claim that since no party requested a review of the countervailing duty order at the time of the first or second anniversary, those duties have become final duties. They also assert that the Department must deduct the cost of antidumping duties equal to the amount of the calculated margin in this review. Petitioners note that the court acknowledged in *Zenith Elec. Corp.* v. *United States,* 18 CIT __ Slip Op. 94–146 (September 19, 1994) that the deduction from USP of actual antidumping duties remains an open issue. Accordingly, contend petitioners, the court expects that the Department will approach the payment of actual antidumping duties differently than it does the payment of estimated antidumping duties.

Respondent argues that in the absence of reimbursement, it is unlawful and contrary to Department practice to deduct antidumping and countervailing duties from USP. Respondent contends that petitioners' reading of the statute is contradicted by both long-standing administrative and judicial precedent. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 60 FR 44009 (August 24, 1995), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Administrative Reviews*, 60 FR 10900, 10907 (February 28, 1995), *PQ Corp.* v. *United States*, 652 Supp. 724, 735–37 (CIT 1987), *Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 872 (1993), and *Torrington Co.* v. *United States*, 881 F. Supp. 622 (CIT 1995. Respondent further argues that the Department and the courts have long since recognized that such deductions are not authorized under the antidumping laws because they are, *inter alia*, not ''selling expenses'' within the meaning of the statute. Respondent notes that making the required adjustment would unlawfully result in the double-counting of dumping duties, and would perpetuate dumping orders thereby violating both the letter and remedial purposes of the statute. They also state that Congress has refused to yield to lobbying by the U.S. steel industry for the enactment of legislation that would for the first time authorize such a deduction.

Respondent asserts that petitioners are incorrect in their argument that the issue of deducting antidumping and countervailing duties should be considered differently in this case because the Department is determining ''actual'' rather than ''estimated'' antidumping duties. Respondent also states that petitioners are wrong in their extension of this argument to Dongbu's countervailing duty deposits on the theory that such deposits represent ''actual'' duties because the amounts deposited are ''conclusive'' since no party requested an administrative review. Respondent notes that the countervailing duty order is currently on appeal to the Court of International Trade and liquidation of these entries has been suspended pending the outcome of that appeal.

By assessing duties beyond the actual margins of dumping, according to respondent, petitioners' recommended deduction would also violate international law as embodied in the World Trade Organization's antidumping agreement. *See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, April 15, 1994, and *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, article 2¶ 4.

Respondent claims that petitioners are incorrect in arguing that their proposal will not result in a double-counting of antidumping duties. Rather, respondent asserts it is a ''mathematical certainty'' that this will be the result. Respondent argues that if petitioners' suggestion were followed, it would be impossible for a company engaged in indirect PP sales to ever eliminate its margins. Respondent concludes its argument by stating that petitioners have provided no legal support for their position either in the language of the statute, legislative history, court decisions, international law or the Department's historical interpretation of the law.

Department's Position

We disagree with petitioners. In *Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom (''UK Lead and Bismuth''*), 60 FR 44009, 44010 (August 24, 1995), petitioners made arguments similar to those presented here '' that ''actual'' antidumping duties are a ''selling expense'' and that the Department has not previously considered whether to deduct ''actual'' expenses under section 772 (d)(2)(A). In *UK Lead and Bismuth*, we responded that ''[a]ntidumping duties are intended to offset the effect of discriminatory pricing between the two markets. In this context, making an additional deduction from USP for the same antidumping duties that correct this price discrimination would result in double-counting. Therefore, we have not treated cash deposits of estimated antidumping duties as direct selling expenses.'' *Id.* at 44010. *See also Color Television Receivers from the Republic of Korea, Final Results of Administrative Review*, 58 FR 50333, 50337 (September 27, 1993); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Administrative Reviews*, 60 FR 10900, 10906 (February 28, 1995). This same reasoning would also hold where ''actual'' antidumping duties are known. The fallacy of petitioners'' argument for treating antidumping duties as a cost is that antidumping duties, although paid by an importer, are not selling expenses, nor are they normal customs duties. Antidumping duties are unique in that they represent antidumping duty *margins*—a measure of price discrimination between FMV and USP. The statutory remedy for such unfair price discrimination is to assess antidumping duties against the imported merchandise in an amount equal to the amount by which the FMV exceeds the USP for the merchandise. 19 U.S.C. 1673. To then subtract this amount from USP in order to recalculate a supra-antidumping duty margin would be creating additional price discrimination that did not exist. This is the same as saying that dumping margins must be adjusted to account for dumping margins. Such double counting of antidumping duties is contrary to the Act, which is designed to comport with Article 8¶ 2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (''GATT'') 1994* in that the duty collected must not exceed the margin of dumping.

We also disagree with petitioners' extension of their argument to Dongbu's countervailing duty deposits on the basis that the amounts deposited are ''conclusive'' since no party has requested an administrative review. Even though the countervailing duty order is currently on appeal to the Court of International Trade and liquidation of these entries has been suspended pending the outcome of that appeal, we still would not deduct the actual duties from USP for the reasons outlined above.

Comment 8

Petitioners note that in the preliminary results of this review, the Department calculated Dongbu's dumping margins using Dongbu's reported U.S. credit expenses. However, at verification, the Department determined that Dongbu's short-term interest rate during the period of review should be revised upward.

Department's Position

We agree with petitioners. The Department recalculated Dongbu's credit expenses using the revised interest rate as determined at verification for the final results of this review.

Comment 9

Petitioners argue that Dongbu's freight charges for home-market sales should be reduced by the amount of the intra-company transfer of funds between Dongbu and Dongbu Express. They assert that transportation services for Dongbu's home-market sales are provided by unrelated trucking companies pursuant to contracts with Dongbu's wholly-owned subsidiary, Dongbu Express; and that as such, Dongbu's payment to Dongbu Express for those services is nothing more than ''an internal price constructed for bookkeeping purposes.'' Petitioners contend that the Department should revise these expenses to exclude markups charged by Dongbu Express on the grounds that such markups represent intra-company transfers of funds. They cite *Final Determination, Rescission of Investigation, and Partial Dismissal of Petition High Information Content Flat Panel Displays and Display Glass Therefor from Japan*, 56 FR 32376 (July 16, 1991), and *Final Results of Antidumping Duty Administrative Review: Color Picture Tubes from Japan*, 55 FR 37915 (September 14, 1990), in arguing that the Department has previously disregarded the same type of markup paid to Dongbu Express when calculating adjustments to FMV, and that the Department attempts to value sales-related services at actual market rates, rather than at the rates established between related parties.

Respondent counters that payment of a markup for such valuable services in this case is consistent with commercial considerations. Respondent argues that the Department has similarly acknowledged and accepted that an administration fee paid by a respondent to its related shipper reflected additional services which would have to be assumed by either another trucking company or the respondent itself. According to respondent, there is no dispute regarding the services covered by the markup (*i.e.*, that Dongbu Express acts as a freight forwarder in arranging for and subcontracting trucking services for Dongbu). Respondent states that Dongbu has also demonstrated that the markup reasonably reflects the value of those services.

Dongbu states that it has shown that, on average, the percentage of Dongbu Express' general expenses to its cost of sales is equal to the profit it earns. The sum of these two elements equals the markup to the cost from the unrelated freight company charged to Dongbu. Thus, according to respondent, to ensure that the reported freight amounts accurately reflect market rates, the Department must use the price from Dongbu Express to Dongbu.

Department's Position

We disagree with petitioners. We find that the markups charged by Dongbu Express to Dongbu were commercially reasonable charges for the services provided by Dongbu Express. Although the Department does not have a standard policy requiring it to deduct related-party markups in all cases, in *Final Determination, Rescission of Investigation, and Partial Dismissal of Petition: High Information Content Flat Panel Displays and Display Glass Therefor from Japan*, 56 FR 32376, 32393 (July 16, 1991), the Department rejected the price between related parties not because there was a markup, but because it was determined that the reported amount reflected a price constructed for ''internal bookkeeping purposes'' rather than a market value. Also, in *Final Results of Antidumping Administrative Review: Color Picture Tubes from Japan,* 55 FR 37915, 32922–23 (September 14, 1990), the Department acknowledged and accepted the respondent's argument that an administrative fee paid by the respondent to its related shipper reflected additional services that would have been sustained by either another trucking company or the respondent directly. In the present review, we verified the arm's-length nature of Dongbu's freight charges and found no basis for reducing home-market inland freight charges. We agree with respondent that Dongbu has demonstrated that: (a) on average, the percentage of Dongbu Express's general expenses to cost of sales is equal to the profit Dongbu Express earns; (b) the sum of these two items equals the markup to the cost from the unrelated freight company to Dongbu; and (c) the prices charged to Dongbu by Dongbu Express accurately reflect market rates.

Comment 10

According to petitioners, the amounts reported by Dongbu and used by the Department to determine the market rates for Dongbu's foreign brokerage and handling charges are incorrect. They reject the amounts used for the following reasons: (1) the evidence presented by Dongbu that freight charges are provided at arm's-length rates is irrelevant to whether the same company also provides unloading charges at arm's-length rates, and (2) Dongbu has not demonstrated that Dongbu Express provides freight services at arm's-length rates. On this basis, argue petitioners, the Department must determine the value of unloading charges incurred in Korea using alternative information, specifically, the highest reported brokerage and handling charge for any U.S. sale as the adjustment for all of Dongbu's U.S. sales.

Respondent argues that the record demonstrates that the charges Dongbu reported in connection with related party transactions are at arm's-length, and that the small amounts reported which reflect Korean unloading charges are for a service performed solely by Dongbu Express and provided solely for Dongbu. Respondent argues that Dongbu has shown that other, more valuable and significant services provided by Dongbu Express (*i.e.,* inland freight charges, both to the United States and in the home market) are on an arm's-length basis. Respondent also notes that it is a matter of record that Dongbu Express was profitable throughout the review period. Accordingly, states respondent, this evidence provides a sufficient and reasonable basis to conclude that the transactions for relatively small brokerage and handling charges are also at arm's length.

Department's Position

We disagree with petitioners. Although the Department generally prefers to demonstrate that a related-party service was provided at arm's length by comparing those rates with charges for similar services provided by unrelated companies, the Department does not automatically resort to best information available when that methodology is unavailable. Verification is the Department's means of testing information; it is not intended, nor is it possible, that every single item be examined during verification. *See Monsanto Co.* v. *U.S.,* 698 F. Supp. 275, 281 (CIT 1988). As our verification report indicates, we performed an arm's-length test on Dongbu's related party, Dongbu Express. We reviewed invoices from an unrelated trucking company to Dongbu Express, and found that inland freight charged by the unrelated party in question was lower than that charged by Dongbu Express. On the basis of this verification, we have no reason to believe that Dongbu's brokerage and handling expenses are not also at arm's length.

Comment 11

Petitioners contend the Department should have applied total BIA to Union because of the respondent's inability, at verification, to properly document home-market product characteristics. As a consequence of the flawed verification, petitioners believe that the Department cannot be confident that (1) it is matching U.S. sales to the proper home-market transactions in price-to-price comparisons; (2) it is matching the COP assigned to a home-market model to the proper home-market price in the sales-below-cost test; and (3) it is properly resorting to CV in cases where there is no similar, contemporaneous home-market product or the home-market sale price is below the COP.

Petitioners also argue that failure to verify Union's product characteristics taints not only Union's product comparisons, but also Union's COP and CV data, since those data are reported on the basis of specific control numbers, and each control number (''CONNUM'') is defined by a unique set of unverified product characteristics. To derive the per-ton cost of each CONNUM reported in its response, petitioners state that Union allocated costs on the basis of the total quantity produced of that CONNUM. If the home-market product characteristics used as a basis for defining CONNUMs are suspect, according to petitioners, then the production quantities and cost allocations based on those CONNUMs are unreliable.

Petitioners claim that, in a number of cases where the use of unverified data would have rendered meaningless any calculation employing that data, or where the Department was unable to verify a respondent's home-market product characteristics, the Department has resorted to total, rather than partial, BIA. In addition, petitioners note that the Department has routinely resorted to total BIA where a respondent has destroyed, or has been unable to produce, documents supporting critical aspects of its submitted data. Petitioners point out that the CIT has recognized that parties who initiate unfair trade proceedings—as did Union by requesting this review—bear the burden of maintaining and retaining records relevant to the proceeding. *See, e.g., Krupp Stahl AG v. United States,* 822 F. Supp. 789 (CIT 1993) (''*Krupp Stahl*''). Indeed, petitioners note, even DKI, a company that—unlike Union—did not anticipate being reviewed in this proceeding, retained production records and other customer correspondence relevant to home-market sales during the POR. Petitioners contend that Union's data deficiency, which was caused by its failure to retain relevant production records and customer correspondence in a review that it requested, is every bit as pervasive and significant as in prior cases where the Department has resorted to BIA. According to petitioners, when this data deficiency is combined with the Department's inability to verify the accuracy of Union's home-market date of sale and Union's failure to report accurate dates of sale for a significant percentage of its U.S. sales, the Department has no alternative but to resort to total BIA in its final results in petitioners' view.

Petitioners cite *Krupp Stahl* in support of their contention that the choice of which information to use as BIA must not reward a respondent. Because it applies only to price-to-price comparisons, petitioners argue that the Department's BIA methodology rewards Union Steel by failing to account for the possibility that costs assigned to a particular CONNUM might not be matched to the correct home-market price in the sales-below-cost test, or that the use of CV as a result of home-market sales falling below COP or the lack of a home-market match would be improper. It also fails to address the possibility that Union's reported COP/CV amounts do not correspond to the product to which they are assigned. Petitioners also take issue with the Department's presumption that the largest possible adjustment to the prices of comparable products is no more than 20 percent of the cost of manufacturing (''COM'') of that product. Petitioners claim that the Department can have no idea of the extent to which improper matches may understate FMV because some or all home-market products may be improperly matched. Therefore, petitioners state, any sales of any product in Union's home-market database could theoretically be compared to U.S. price, and the record shows that price differences between U.S. and Korean sales are in fact far greater than the adjustment preliminarily used by the Department. According to petitioners, the Department has therefore rewarded, rather than penalized, Union for its improper record-keeping procedures. Should the Department fail to use total BIA in its final results, the Department will invite manipulation and circumvention of the antidumping process by respondents, petitioners say.

Under the partial BIA methodology employed by the Department, petitioners claim a respondent could request a review and then destroy critical supporting documentation associated with any sale under the guise that such destruction is its normal business practice and assign to such sales the product characteristics it desires to ensure the most favorable price-to-price comparisons and sales-below-cost test result, secure in the knowledge that the Department will cap any BIA adjustment at a mere 20 percent of the product's COM. Similarly, petitioners argue, knowing that reported COP/CV amounts will not be adjusted despite the Department's inability to verify home-market product characteristics, respondents could simply assign costs to specific CONNUMS as they desire to ensure the most favorable outcome. The Department's inability to verify Union's home-market product characteristics taints price-to-price comparisons, the sales-below-cost test, and the decision to resort to CV, as well as Union's submitted COP/CV data.

The Department stated that its BIA methodology was designed to address the possibility that (1) ''U.S. sales are not being compared to sales of the most similar home-market models' and (2) ''reported costs of home-market models may not correspond to the costs of the home-market products that were actually shipped.'' (Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, ''Treatment of Union Steel With Respect to Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,'' dated August 8, 1995. Because the Department's partial BIA methodology assigns a 20 percent COM adjustment to FMV used only in price-to-price comparisons, does not contain any adjustment to Union's COP/CV data, or affect the sales-below-cost test and the basis for resorting to CV, it fails to account for the latter. For all of the above reasons, petitioners urge the Department to apply total BIA to Union for the final review results.

Respondent rejects both petitioners' claim that there are pervasive and significant data deficiencies sufficient to warrant total BIA and the Department's use of partial BIA. Union states that the Department verified home-market date of sale and that the Department has already adjusted the data with regard to U.S. date of sale. Union contends that there is no evidence on the record indicating that the home-market codes are wrong. It notes that product code questions for home-market sales have no implications for any of the cost data.

Respondent states that petitioners' reliance on *Cold-Rolled Stainless Steel Sheet from Germany* and *Krupp Stahl* is misplaced. In that case, Union states, all records had been destroyed, preventing it from preparing a response to the Department's questionnaire and preventing the Department from conducting a verification. In this case, Union claims only two types of documents are at issue: mill certificates and customer correspondence. In Union's view, it had no reason to suspect that these documents, which it does not normally retain, would be deemed necessary at verification. Union concludes that the precedents ''underscore that the use of total BIA is appropriate only for a noncooperative respondent or a respondent whose submission is so fundamentally flawed that it cannot be used even with partial BIA.'' *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France,* 60 FR 10900. Thus, respondent states that the Department must reject petitioners' request to use total BIA.

Respondent notes that the statement in the verification report that the Department was ''unable to verify the accuracy of the product code system for [Union's] home-market sales, or determine the basis behind Union's coding of certain model-match characteristics,'' upon which petitioners rest their claim for application of total BIA, is contradicted by factual evidence on the record. Union asserts that, as part of the verification, the Department: (1) Repeatedly tied the product codes reported on Union's tape to the product codes used on commercial invoices maintained in the normal course of business; (2) traced the reported invoice data, including the product code, from the commercial invoice to Union's sales ledgers, and thus to the audited financial accounting system; (3) compared the product codes with Union's product manual, and found no discrepancies; and (4) repeatedly checked product codes for U.S. sales (which are the same product codes used in the home-market) against mill certificates. Union also asserts that the decision memorandum forwarded to the Assistant Secretary failed to mention the first three of these facts. Rather, Union avers, the Department's memorandum gives central status to two types of documents—mill certificates and customer notifications—on no basis other than the fact that these documents were not retained. Union also claims that, by not notifying the company during verification of its concerns with regard to product characteristics, the Department deprived Union of an opportunity to address those concerns.

Union, citing recent cases (*see, e.g., Brass Sheet and Strip from Canada,* and *Oil Country Tubular Goods from Korea*), argues that the Department routinely relies on commercial documentation, such as invoices and sales ledgers, to verify internal product codes, and does not normally trace product codes to production records.

Union maintains that there exists on the record production information, viewed by the Department at verification, supporting its internal product characteristics. The Department, according to Union, examined post-POR mill certificates. In addition, Union claims that the Department's cost verifiers ascertained that Union used a single product coding system, which enabled them to test the quality and specifications of input materials to the quality and specifications of the finished product. It is Union's view that the Department's verifiers could have tied Union's product codes to its inventory withdrawal records and to entries into the finished goods inventory, which in turn could have been tied to other production records, but they did not do so. Alternatively, Union suspects the Department could have reconciled total sales to total inventory entries or withdrawals, thereby confirming that the amount sold of a given product matched the total amount produced and entered into finished goods inventory, but it did not.

Respondent reiterates that there is only one internal product coding system used for home-market sales, U.S. sales and cost of manufacturing. Respondent claims it is beyond dispute that the Department verified both the U.S. sales data and cost data, which confirms the integrity of the entire internal product coding system, even if the Department was not fully satisfied that it could tie home-market sales to mill certificates or customer correspondence.

Union also asserts that its recordkeeping practices do not differ significantly from Dongbu's, which, like Union, did not retain home-market mill certificates or customer correspondence. Even if Union had kept records in a significantly different manner from Dongbu's, Union cites *Coated Groundwood Paper from Finland; Final Determination of Sales at Less Than Fair Value* (56 FR 56363—November 4, 1991) as an example where the Department relied on very different documentation to verify two respondents' respective product characteristics. In that case, Union claims that the Department relied upon respondent Metsa-Serla's product coding sheet to verify Metsa-Serla's product characteristics. It says Metsa-Serla was not penalized because it was unable to provide mill orders and the other respondent, UPM/Rupola, was. Union maintains that the context in which the Department examined certain documents at verification is irrelevant; the key point is that the Department routinely uses commercial documentation as satisfactory evidence of the accurate reporting of product codes and characteristics.

Union disputes the Department's assertion that a majority of Union's reported home-market characteristics—derived from the internal product code—did not identify such characteristics, and therefore did not support respondent's conclusion with record evidence.

Union states that the record of this review does not provide any explanation or reasoned basis for the Department's product hierarchy. Under those circumstances, it is Union's opinion that the Department may not lawfully use partial BIA even if Union fails to support its product distinctions sufficiently.

Even assuming certain product characteristics could not be verified, Union argues, the Department's conclusion that the maximum possible adjustment for differences in physical characteristics of the merchandise (''difmer'') is necessary to account for the worst case is unwarranted. The Department could have drawn an adverse inference with respect to the specific product characteristics at issue.

Union asserts that information on the record of the cost investigation allows the Department to limit its use of partial BIA to only those product characteristics that the Department erroneously considers not to be verified. Union suggests that the Department could allow those product characteristics dependent on the product code to vary to determine the maximum possible universe of products for each reported product code. The Department could then choose the highest home-market variable cost of manufacture (''VCOMH'') for each such universe and use it to calculate the difmer (subject, of course, to the 20 percent difmer cap). Union suggests even if the Department finally concluded that the product codes were not verified, it could still calculate a margin based on submitted data.

Union also rejects the idea that its COP and CV data are tainted by the alleged failed verification of home-market product characteristics. Union claims that the Department never expressed any concern that the post-verification issue of product characteristics extends to the calculation of Union's production costs. Indeed, Union asserts, its costs were developed on the basis of withdrawals from materials inventory and pass-through quantities, which are entirely independent from the quantity of product shipped. Union claims that the cost verification report and exhibits demonstrate that the Department could trace any product's characteristics back to the daily line production reports for the final stage of processing; that these reports indicate the internal product code and the nature of the final stage of processing; and that the product could be traced back through the production process based on the mill order number. The Department's verifiers, Union maintains, identified the input coils and determined the chemistry of the input coils from the suppliers' mill certificates.

Union finally notes that, in the parallel review of Union's corrosion-resistant products, petitioners explicitly conceded that Union has a single product coding system in both the U.S. and home markets. Therefore, to the extent that the product coding system was verified in one market, it was verified generally.

Union protests that petitioners' alleged claim that the Department's final determination is driven by a single sentence in the verification report makes a ''mockery'' of the antidumping law and procedures in general and of this proceeding in particular. Union states that in petitioners' view the final decision in this case was effectively made on May 16, 1995, by the authors of the verification report when they inserted the allegedly damning sentence into the record. Union further notes that petitioners portray that one sentence as ''handcuff[ing]'' the Department without regard to any analysis of all the other information on the record of this proceeding. As a matter of law, Union avers, the Department's preliminary and final determinations must be based upon a comprehensive analysis of the total record of the proceeding. Union contends that conclusory statements in internal Department memoranda are of value only if supported by the record.

Union argues that the Department's preliminary determination that Union's home-market product characteristics were not fully verified was based on an incomplete and erroneous presentation of the facts on the record. Union claims that the decision memorandum elevates two potential ancillary means of verification (mill certificates and customer notifications) to central status on no basis other than the fact that these documents were not retained. Union claims the Department verified the accuracy of Union's home-market product characteristics through other means, and had many others available. Union also takes issue with the verifiers not having advised Union at verification of any outstanding concerns over product characteristics based on product codes. Had the Department expressed any such concerns, Union argues it could have suggested additional ways to verify its data, but was denied the opportunity.

Petitioners protest what they term Union's ''eleventh-hour attempt to ''clarify,''' long after its May 23, 1995, submission purporting to correct certain aspects of the Department's sales verification report, the sentence in that report which stated that the Department was unable to verify Union's home-market product characteristics, by saying the sentence ''[was] in error or [. . .] misleading because overly broad when written.'' Petitioners argue that Union should not be allowed, at this late date in the proceeding, to assert that the report was inaccurate in this regard when it could have raised this concern long ago but elected not to do so. Union, petitioners state, simply failed to present to the Department during verification any documentation supporting the premise that Union's home-market product characteristics had accurately been verified.

Petitioners dispute Union's suggestion that only a minority of product characteristic variables were derived from the internal product code. Petitioners point out that the verification report specifically says the opposite in three different places, and that Union never attempted to clarify or rebut these statements. Union's claim that certain product characteristics were derived from the product's name is a *non sequitur* in petitioners' view. They argue that while these physical characteristics may be associated with the product name, that claim in no way demonstrates that the product actually produced and sold possesses the physical characteristics attributable to it by virtue of its product name. Petitioners add that such a demonstration could only have been effected by providing the Department with production records indicating the physical characteristics of the products produced and sold (*e.g.*, production orders or mill certificates), which Union failed to do. In any event, petitioners argue, even if a minority of Union's reported product characteristics were derived from its internal product code, it would be unreasonable to limit application of partial BIA to specific product characteristics, because Union's home-market sales, cost, and CV data would still be tainted. Petitioners suggest that the Department, if it persists in applying partial BIA to Union, could use as partial BIA the highest VCOMH reported in Union's database for purposes of calculating the difmer adjustment as well as COP and CV.

Respondent denies that the Department's preliminary results reward Union and urges the Department to reject the notion that, absent any evidence of manipulation, a 20 percent difmer adjustment would provide future respondents with an incentive to manipulate the model-match process.

Union argues that even if the Department justifiably determined that Union's product characteristics had inadequately been verified, its decision to resort to partial BIA was wrong, since the statute affords the Department broad discretion to base FMV on CV. Because Union's CV data was verified and reflects the cost of the products sold in the United States, and the Department's stated policy is to use as much of a respondent's data as possible, the Department had a responsibility to use Union's own, verified data rather than using a flat, across-the-board difmer of 20 percent as BIA. Respondent notes that a comparison of U.S. price to CV is totally unaffected by the perceived problems with the verification of product characteristics and suggests that in light of the Department's concerns, the use of CV is ''the obvious alternative.''

Petitioners counter that Union's CV database is just as tainted by the failure adequately to verify product characteristics as Union's sales database. Union, they claim, mistakenly believes that, because the product characteristics associated with the merchandise sold by Union in the U.S. market are not in dispute, the costs associated with producing that merchandise are also not in dispute. Petitioners state that, due to the Department's inability to verify the accuracy of Union Steel's reported home-market product characteristics, the physical characteristics of the products whose production levels Union used in calculating the unit cost of each given product are either unknown or unreliable.

Petitioners argue further that even if the per-unit costs used to calculate CV are not tainted by the product-characteristic deficiency, CV is nevertheless unreliable because the home-market profit component of CV is tainted by that deficiency. The profit component of CV is based on the weighted-average profit made on home-market sales. Since the Department cannot be certain that the reported COP of home-market products is being compared to the proper home-market sales and prices, the Department cannot be certain that the profit component of Union's CV is accurate. This deficiency, petitioners contend, renders the reported CV amounts unreliable.

Petitioners also affirm that the statute does not give the Department discretion to use CV as FMV when home-market sales data is not verified. They note the statute provides that the Department may use CV when home-market sales are found to be below cost in significant numbers and when there are no matchable numbers in the home-market because they exceed the 20 percent difmer test. In those situations, petitioners observe, the Department has before it otherwise usable and properly verified data which cannot be used in margin calculations. In this case, however, the Department did not have home-market sales data that was otherwise usable according to petitioners. Petitioners argue that when the Department is unable to verify submitted data, as it was in this case, the statute requires the Department to resort to BIA, which is always an adverse inference. In this case, they claim using Union's CV data is not adverse to Union and would reward Union.

Petitioners counter that the record is unclear as to whether the Department ''repeatedly'' tied the product codes to sales and production documents, as claimed by Union. Even if the Department did repeatedly perform each of these tasks cited by Union, petitioners argue that none of these tasks (*i.e.*, tying product codes from sales invoice to sales tape, tracing invoice data to sales ledgers, checking product codes against a product code key, checking U.S. product characteristics against mill test certificates) in any way confirmed that products sold in the *home-market* possessed the physical characteristics reported by Union.

Petitioners claim that the statute requires the Department to verify the accuracy of the data submitted, not some proxy thereof. They note that Union has admitted on the record that its home-market customers are somewhat less concerned than U.S. customers with the accuracy of product specifications. Therefore, petitioners argue, verification of U.S. product characteristics cannot serve as proxy or surrogate for verification of home-market product characteristics. Petitioners allege that, to the extent that the internal product code was the basis for matching home-market products to U.S. products, Union had an incentive to ensure that the product code assigned to an individual home-market sale resulted in the most favorable match. Petitioners claim that Union does not seem to recognize that submitted data must be verified not to its own satisfaction, but to the Department's.

Petitioners also argue that the verification reports cited by Union as evidence that the Department normally applies a lower standard for verification of product characteristics than was the case here are all inapposite. In those cases, petitioners claim, the Department was not verifying the accuracy of product characteristics as reflected by product codes, but rather whether the merchandise was in-scope versus out-of-scope, or whether the respondent had completely reported all sales of the subject merchandise. In those cases, according to petitioners, the Department was provided with other documentation, including documentation furnished by the customer, such as purchase orders and order confirmations.

Petitioners contend there is a critical distinction between, on the one hand, verifying whether merchandise is in-scope or whether all sales of the subject merchandise during the POR were reported, and, on the other hand, whether the reported products actually possess the physical characteristics reported. The former is a preliminary, general inquiry which is designed to ascertain whether all sales have been reported, while the latter is a separate, detailed inquiry designed to ensure that the physical characteristics of comparison products were accurately reported. In this case, petitioners assert, the Department was unable to verify the accuracy of Union Steel's reported home-market product characteristics in the context of the latter inquiry.

Further, as Union has conceded, the verification techniques employed in a given instance are dependent on the specific facts of each case. Petitioners state that the Department has considerable latitude in conducting verification and ''[t]he decision to select a particular method of verification rests solely within [the Department's] sound discretion.'' *See Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993). Petitioners stress that Union, as the requester of the review, has only itself to blame for not preserving vital documentation months after the review had started. In addition, petitioners note that Union gave the Department reason to distrust the company's reported product characteristics by placing on the record a report, prepared by a private consulting firm in Union's employ, which stated that the respondent was incapable of tracing its production records to individual shipments.

Petitioners claim that Union's *post hoc* explanation of the production records it allegedly maintained does not demonstrate the accuracy of its reported home-market product codes. Petitioners allege that the explanation furnished by Union with regard to post-POR records allegedly examined by the Department's verifiers constitutes new factual information that should be stricken from Union's case brief. Petitioners argue that explanation does not exist anywhere on the record, nor is it clear that verification reports or exhibits support that purported explanation. Consequently, petitioners request that this explanation be stricken from the record and ignored on the grounds that it is untimely submitted. In any event, these materials were examined by petitioners for the limited purpose of ascertaining the accuracy of Union's reported date of sale in the home-market. Therefore, petitioners claim any assertion that these materials support home-market product characteristics is *post hoc* and unverified.

Petitioners also deny that the cost verification supports the validity of Union's internal product coding system. They claim that the cost verifiers did not ascertain whether the reported internal codes accurately reflected the characteristics of products produced and sold. Rather, petitioners say, the verifiers tested input costs on the basis of the specifications of Union's internal product code and physical dimensions. It is unclear, petitioners note, whether the products that Union reported as coming off its production line actually possessed the physical characteristics represented by the internal product code assigned to them in the accounting records maintained with respect to production. Finally, petitioners argue, the fact that the accuracy of the internal code may have verified with respect to one market (the United States) does not mean it verified with respect to the other (Korea). Even if the Department incorrectly concluded that the accuracy of Union's internal product code with respect to products produced for the home-market was verified, the accuracy of the codes appearing on self-generated commercial invoices for home-market sales remains unverified. Petitioners object to Union's suggestion that the Department could have employed alternative verification techniques, thereby trying to usurp the Department's role. They note that the verification outline clearly put the respondent on notice as to the goals of the verification and as to the type of supporting documentation Union would be required to produce. It was therefore ''unconscionable'' for Union to destroy records that would have allowed the Department to verify the accuracy of the most critical component of antidumping analysis—the product characteristics assigned to each control number, according to petitioners. It is incumbent upon a respondent to volunteer to the Department's verifiers information as to what sort of documentation is available to permit verification. It would appear that by inserting the consulting firm's report on the record of the verification, Union was fully aware of the problem posed by verifying home-market product characteristics. Yet it was not until the case brief that Union volunteered the existence of documents which Union claims would have permitted such a verification. Union had repeatedly denied that production records could be tied to shipment records. Union also suggests *post hoc* that inventory records could have been used to verify product characteristics, yet the consulting firm's report states outright that these records are inaccurate. If the product code could not be verified for home-market sales, petitioners suggest, it is doubtful that the accuracy of the product codes in the inventory records could have been verified. Petitioners affirm that there is no requirement that the Department inform a respondent, during verification, of errors and deficiencies discovered during same.

Petitioners dispute Union's contention that the Department's preliminary decision to use BIA was arbitrary because it was based on a comparison of Union's recordkeeping practices with those of Dongbu. Petitioners find this ''strange,'' since in its case brief, Union itself compared its recordkeeping practices to those of other respondents in non-flat-rolled-steel cases in an attempt to demonstrate the validity of its records. As to Union's contention that, in fact, its recordkeeping practices differ little from Dongbu's, petitioners point out that Union officials or counsel were not present at Dongbu's verification, that Dongbu never asserted (as Union did) that it was incapable of tracing production to shipment, that it was able to show certain production records to the Department, and that Dongbu had not destroyed all of its home-market production records relating to the POR.

Department's Position

We disagree with petitioners that the Department should have applied total BIA to Union. The Department applies total BIA when a respondent refuses to provide the information requested in a timely manner or in the form required, or otherwise significantly impedes a proceeding. *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts from France, et al.; Final Results of Antidumping Administrative Reviews,* 60 FR 10900, 10908 (February 28, 1995), *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993); *NTN Bearing Corp. of America* v. *United States,* Slip Op. 93–

129 (CIT July 13, 1993). The Department considers the errors and inconsistencies in Union's submission to be of such a nature that they do not warrant the use of BIA, as discussed below. With respect to U.S. date of sale discrepancies, we agree with respondent that this has already been addressed in the preliminary results by using date of shipment as date of sale.

We agree with respondent that the cases cited by petitioners regarding the destruction of records are not applicable to this instance. In *Krupp Stahl AG* v. *United States,* 822 F. Supp. 789 (CIT 1993), for instance, respondent purposefully destroyed *all* records for the POR, making it impossible for them to respond to our questionnaire or enable us to verify any submitted information. That is not the case with Union. Following its normal procedures, Union did not retain mill certificates or other documents needed to verify home-market product characteristics. However, all other documentation was maintained and there is no evidence that respondent's failure to retain certain records was intended to impede our ability to conduct this proceeding.

Although we reassert our determination that applying only partial BIA to Union is warranted, after analyzing all comments received and re-evaluating the information on the record, we are modifying our application of partial BIA compared to the preliminary results. Because Union's reported home-market product characteristics were not verifiable, it was not possible for the Department to make reliable price-to-price comparisons. Such deficiencies may warrant the use of total BIA in many circumstances. In this particular case, however, the Department has concluded that the use of total BIA is unwarranted for the following reasons:

- Union's normal business practice at the time was not to retain certain production records, such as mill certificates;
- there is no evidence on the record that Union deliberately refrained from retaining those records with the purpose of impeding the Department's ability to conduct this proceeding;
- we were able to verify product characteristics of the merchandise sold in the U.S. market and to link specific U.S. sales to control numbers; and
- CV was associated with specific control numbers.

In light of the above, and because the Department is treating Union and DKI as a single producer of certain cold-rolled carbon steel flat products for purposes of this review, we determined to use DKI's home-market sales and our usual below-cost sales test as bases for comparison in cases where U.S. sales by Union were matched to similar, contemporaneous sales by DKI in the home market. Where Union's U.S. sales could not be matched to similar, contemporaneous DKI transactions in the home market, or where such DKI transactions failed the below-cost test, we determined that basing FMV on CV, in accordance with section 773(a)(2) of the Act, was warranted. While we were able to match all of Union's U.S. sales to similar, contemporaneous, DKI transactions in the home market, all of these DKI transactions were below cost, which caused CV to be used as the basis for FMV in all instances.

Section 773(e)(1)(B)(ii) of the Act requires that, as a component of CV, an amount for profit shall be used that is equal to that usually reflected in the sales of the merchandise made by producers in the country of exportation, except that the amount of profit shall not be less than 8 percent of the sum of such general expenses and cost. In this instance we were unable to determine the actual amount of Union's profit because the profit component of Union's reported CV data is derived from Union's home-market COP database, which, as we explained above, is not usable because we could not verify Union's home-market sales product characteristics. Because these product characteristics could not be verified, we were unable to match specific sales to specific costs; thus, it was not possible to determine the actual profit for specific products based on a transaction-by-transaction analysis. Consequently, because of this failure of verification, the Department, pursuant to section 776(c) of the Act, resorted to the use of BIA in order to determine the profit component to be used in calculating CV. As partial BIA, we have used the higher of the weighted-average profit for all of Union's above-cost home-market sales or the statutory 8 percent profit.

In order to determine which of Union's sales were made at prices above the COP, we calculated a simple average of all COPs reported by Union. We were unable to calculate a weighted-average COP because we could not link Union's COP database to individual home-market sales as Union's home-market sales product characteristics could not be verified. After calculating the simple average COP, we compared that cost to each individual home-market sale to determine which sales were made at prices above the average COP.

Once we had determined which home-market transactions were made at prices above the simple average COP, we calculated the transaction-specific profit on each of those sales. This was done by first calculating the sales value of each individual home-market transaction (*i.e.,* net price times sales quantity). From each sales value we subtracted the value of the COP for that particular transaction to determine the transaction-specific profit (*i.e.,* sales value minus simple average COP times sales quantity). Finally, we weight-averaged the transaction-specific profits for purposes of deriving an overall profit percentage for use in the CV calculation. We were able to weight-average profit because we verified the quantities and prices of Union's individual home-market sales transactions.

Given Union's home-market data deficiencies, we determined that this approach was a reasonable means to calculate the profit component of CV. We used as much of Union's verified data as possible. However, where verified data were not available, we resorted to partial BIA, still using Union's data but in a more adverse manner than if the data in question had not failed to verify. We concluded that adopting this partial BIA approach, rather than using the statutory minimum profit, comported with the statute, the Department's practice, and with Court precedent. As the Department has previously noted, ''the noncomplying respondent cannot find itself in a better position as a result of failing to comply with the Department's information request than had the respondent provided the Department with complete, accurate and timely data.'' *Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review,* 56 FR 47451, 47453 (September 19, 1991). *See also National Steel Corp., et al.* v. *United States,* 870 F. Supp. 1130, 1135 (CIT 1994) (approving use of adverse partial BIA when only part of the submitted information is deficient). Because the calculated weight-averaged profit was lower than 8 percent, however, we used the statutory minimum profit for CV purposes.

In any future review of this order, however, the Department expects Union to retain any and all records, including production records, necessary to permit the Department to verify Union's home-market product characteristics.

Union argued that use of even partial BIA by the Department was inappropriate for the following reasons. Union claimed that the difficulty in verifying home-market product characteristics was limited to those defined by the internal product code, which is only partially correct. The internal product code did serve as the basis for categorizing many of the cold-rolled model-match variables; however, it was the basis for a majority of the variables, rather than just the five referenced by respondent. In fact, five of the six most important variables in the model-match hierarchy were derived from the internal product code, and Union's methodology for categorizing an additional variable (yield strength) on specific sales was not explained to the Department. Since Union did not maintain records of any correspondence with its home-market customers prior to shipment indicating the product being sought, and the description of products sold in the home market and appearing on the commercial invoices was only the internal product code, with the exception of thickness and width, the Department could not verify that the product code represented an accurate reflection of the product sold and shipped. The fact that Union did not preserve production records for its home-market sales, such as mill certificates, which would provide this detailed information on products produced and which would link these products to specific sales, prevented the Department from determining the accuracy of this system.

With respect to Union's claims that the Department relies on commercial documentation, such as invoices and sales ledgers, to verify internal product codes, we note that Union's invoices—unlike those for many companies—do not contain a detailed product description of the product sold. Neither did Union maintain any customer correspondence or any documentation which contained such a detailed product description. With respect to the cases cited by Union, we note that the reference in *Brass Sheet and Strip from Canada* was not relevant to verifying product characteristics as it involved a volume and value trace. The reference to *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil and Germany* was also not relevant to the present case, as that case involved the use of industry-wide product codes. No such claim was made by Union; indeed Union consistently referred to its codes as ''internal'' product codes.

Union also alleges that the internal product code was the same as that used for U.S. sales and the Department was able to verify its accuracy. Products sold in the United States, however, had commercial invoices with detailed descriptions of the product sold, and the necessary mill certificates that could be used to confirm these product descriptions. In addition, products sold in the two markets possess different physical and mechanical characteristics, are made to different specifications, and are coded differently in the internal product code.

We note that Union, in its case brief of October 2, 1995 (at 15 *et seq.*), almost seven months after the verification and five months after the sales verification report (''SVR'') was issued, suggests that the Department could have used alternative verification techniques to verify Union's home-market product characteristics. If that were true, respondent could have suggested these techniques during the verification itself, but did not do so. Only the respondent is in a position to know what documentary evidence there exists in its possession; it is the respondent's responsibility to determine, prior to the verification, what documentary evidence exists in its records which supports the information previously supplied to the Department, and to provide such documentary evidence to the Department's verifiers. It is not the responsibility of the Department's verifiers to guess what records might be in the respondent's possession and to suggest to the respondent how it might best document the information provided in the questionnaire responses. We note further that, at verification, Union entered as a verification exhibit a consulting report stating that Union's production and inventory records are inaccurate. *See* Union's SVR of May 16, 1995, at 10. This calls into question the possibility of successfully employing the alternative techniques Union is now advocating. Finally, contrary to Union's claim, the Department did not examine at verification post-POR mill certificates as well as ''factory inspection cards'' for certain home-market sales within the POR.

Union's assertion that its recordkeeping practices do not differ significantly from Dongbu's is also incorrect. Dongbu, like most other parties in these flat-rolled steel proceedings, did maintain mill certificates on at least some of its home-market sales during the POR. Dongbu also retained various customer correspondence containing product descriptions. While it is not the Department's practice to mandate that respondents keep their records in a particular manner, in this case all of this information, as well as any alternative documentation which could have served to verify reported product characteristics, was lacking for Union, or not brought to the Department's attention.

We disagree in part with petitioners' assertion that the CV cost data are not viable because production quantities were used to allocate costs. While it is true that the quantities of each control number sold were used to reconcile total costs to respondent's financial statements, these quantities were not used to build up individual costs by control number. Instead, Union used average material costs based on withdrawals from inventory. The weighted-average costs were then applied to a specific control number, and therefore, the final production quantity of that control number was not relevant. For fabrication costs, Union used the pass-through quantities for each process to accumulate and allocate costs to a specific control number. Again, the final production quantity was not used to allocate costs, and therefore, is irrelevant. Thus, we are satisfied that Union's method of assigning a cost to a specific control number is reasonable and that total costs (*i.e.*, materials, labor, overhead) were allocated to either home-market, third-country, or U.S. merchandise.

We agree with petitioners that the explanation in Union's case brief with regard to post-POR records examined by the Department's verifiers does not exist anywhere on the record and that the verification reports or exhibits do not support that explanation. In fact, we had already requested that the parties delete this information from their briefs, on the grounds that it was untimely submitted. This information, therefore, is no longer on the record.

As we are not using total BIA, comments regarding the choice of a total BIA margin are moot.

Comment 12

Petitioners contend that Union Steel's submitted COP and CV data must be revised to reflect product-specific costs. According to petitioners, Union improperly assigned the same cost of manufacturing to multiple products in its COP and CV databases when these products' physical characteristics differed in yield strength, width, temper-rolling, annealing, and/or surface finish in its home-market sales listing, and differed in thickness tolerance in its U.S. sales listing. The petitioners argue that products with such differences in physical characteristics are not identical and have distinct production costs. For example, producing a product to a smaller tolerance, temper-rolling or annealing a product, or adding various surface finishes all require further processing and, consequently, entail additional costs. Union, therefore, should not have reported these products as having the same COM. Even more troubling, according to petitioners, is the fact that Union reported different COMs for certain products possessing identical physical characteristics with the exception of width. Thus, to avoid any manipulation of cost, the petitioners request that the Department adjust Union's cost data to eliminate the distortion caused by inappropriate cost allocations.

Union contends that its cost data were reported to an appropriate degree of specificity. Union states that the petitioners claim is made without any substantial support because the Department's hierarchy is not based on physical characteristics alone, and that there are no reasons to expect any given company to track possible small differences in costs that may be associated with different classifications in the hierarchy. Additionally, the Department's hierarchy classification chose to conform to commercial practices rather than production characteristics which cause some products to have similar costs of manufacturing. Furthermore, Union states the Department thoroughly verified product costs by control number and found no discrepancies.

Department's Position

For the final results, we accepted Union's CONNUM-specific costs. We found that Union's cost data were allocated to a sufficient level of product detail following the Department's section D questionnaire instructions. Following these instructions, it is possible for some of Union's control numbers to have identical COMs for products that varied only in yield strength and width. Specifically, a product's yield strength is based mainly on the carbon content and, to some extent, micro alloying elements of the raw-material input. A raw material input with a higher carbon level will produce a product with a higher yield strength. However, even though raw-material inputs may vary in carbon content, their acquisition cost can be identical. Additionally, Union weight-averaged its raw materials based on characteristics of the material other than the carbon content (*i.e.*, commercial quality, drawing quality, and ASTM grade). Hence, it is possible for some of Union's products that are in different strength bands to have no cost differential. As for petitioners' concern that the cost of manufacturing should differ for products with different width, we are satisfied that the respondent reasonably allocated costs associated with width differentials. For certain types of cost, Union used processing times to allocate fabrication costs by deriving an average cost. This average cost was then applied to specific control numbers. Therefore, due to this averaging it is possible for identical products, with the exception of width, to have the same cost of manufacturing.

Comment 13

Petitioners contend that the conversion factor used by Union to convert home-market sales of sheet reported in theoretical-weight terms to actual-weight terms was flawed, because Union was unable to document the basis for its formula at verification and because the formula, by Union's own admission, was based on incomplete data covering only a portion of the POR. Petitioners suggest instead that the Department apply a conversion factor derived from the lowest ratio experienced by Union on the basis of information on the record.

Respondent counters that the Department was able to verify the theoretical-to-actual weight conversion factor. Union states that the sales verification report was inaccurate on this point, and that it explained the nature of the discrepancy immediately following the issuance of the report.

Department's Position

Because none of Union's home-market sales were used in our FMV calculations, and all of DKI's sales were in coil (rather than sheet) form, this comment is moot.

Comment 14

Petitioners argue the Department should deny Union's claimed circumstance-of-sale adjustment for inventory carrying costs, since during verification Union prevented the Department's staff from actually examining the area in the mill where the physical inventory is stored. Petitioners claim that allowing the claimed adjustment would only reward Union's obstructiveness.

Respondent retorts that these costs were fully verified. Union notes that it does not have a distinct warehouse for finished goods, and the verification team did examine inventory areas at the mill.

Department's Position

We disagree with petitioners. During the sales verification, the Department's verifiers were given to understand that there was a separate area in Union's mill dedicated to storing inventory, but did not in fact see this area, despite their request to do so. The cost verifiers, however, ascertained that steel coils were being stored on the mill floor. The Department also verified Union's calculation of inventory carrying costs and traced the figures to Union's accounting records. Accordingly, there is sufficient information on the record in support of this adjustment.

Comment 15

Petitioners contend that in calculating Union's USP, the Department must deduct actual countervailing and antidumping duties when they are paid by the respondent or related parties because (1) the plain language of the statute requires this conclusion; (2) court decisions are also consistent with this conclusion; and (3) the record evidence demonstrates that Union America (''UA'') is paying for countervailing and antidumping duties on behalf of Union's U.S. sales and that those costs are included in the price to the first unrelated party.

With respect to the first point, petitioners cite section 772(d)(2) of the Act, which provides in relevant part that ''the purchase price and the exporter's sales price shall be * * * reduced by—except as provided in paragraph (1)(D), * * * United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States'' (19 U.S.C. § 1677a(d)). Antidumping and countervailing duties are plainly import duties ''incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States.'' The language of the statute does not indicate that antidumping and countervailing duties are to be excluded from the phrase ''import duties.'' Moreover, petitioners say, when this provision is read in conjunction with section 772(d)(1)(D) of the Act, the conclusion that antidumping and countervailing duties constitute ''import duties'' under section 772(d)(2)(A) is inescapable. Section 772(d)(1)(D) provides that USP shall be increased by the amount of any countervailing duty imposed to offset an export subsidy. By including the phrase ''except as provided in paragraph (1)(D)'' in section 772(d)(2)(A), the drafters clearly understood the subsection's reference to ''import duties'' as including countervailing duties imposed to offset an export subsidy. This exception was necessary to ensure that the statute was consistent with Article VI¶ 5 of the GATT, which prohibits the assessment of both antidumping and countervailing duties to compensate for the same cause of unfairly low-priced imports, whether by dumping or as a result of an export subsidy. Had the exception not been inserted, an amount would be added to USP by section 772(d)(1)(D) and deducted by section 772(d)(2)(A). Therefore, petitioners believe, Congress contemplated that antidumping and countervailing duties were to be treated as ''import duties'' and deducted from USP.

With respect to the second point, petitioners argue that the Department must also deduct the cost of antidumping duties equal to the amount of the calculated margin for the period being reviewed. In *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (CIT 1993), according to petitioners, the court recognized that section 772(d)(2)(A) of the Act requires the Department to deduct any import duties that can accurately be determined at the time the Department is calculating the current dumping margins. In this case, once the final results are issued, Union's antidumping duties will actually be determined. Therefore, petitioners urge the Department, in its final results, to deduct the difference between FMV and USP (*i.e.,* the actual duty amount) from USP before the final margin is calculated.

With respect to the third point, petitioners cite the verification report as evidence that UA is incurring the cost of antidumping and countervailing duties on behalf of Union, and that those costs are passed on to the first unrelated purchaser in the United States.

Petitioners state that the Department must deduct the full amount of the countervailing duties paid by UA for those entries covered by the first administrative review of the countervailing duty order on the subject merchandise. Since no party requested a review of this order, those duties have become final and they represent a calculable cost to Union apart from the payment of the estimated antidumping duty deposit. Therefore, petitioners claim, the payment of countervailing duties must be treated as actual import duties for purposes of calculating Union's dumping margin.

Union replies that the Department has repeatedly rejected the notion of treating AD/CVD duties as expenses to be deducted from U.S. price. Union adds that, in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10900 (February 28, 1995), the Department stated as follows:

> We agree with respondents that making an additional deduction from USP for the same antidumping duties that correct for price discrimination between comparable goods in the U.S. and foreign markets would result in double-counting. Thus, we have not deducted antidumping duties or antidumping duty-related expenses from ESP in this case.

Union states that the Department disagreed with petitioners' claim that antidumping duties constitute a selling expense, and notes that the Department's practice has been upheld by the courts. Finally, Union denies that the intent of Congress has been that AD/CVD duties be deducted from USP, citing the Statement of Administrative Action that accompanied the URAA that the law ''is not intended to provide for the treatment of antidumping duties as a cost.''

Department's Position

We agree with respondent. *See* DOC Position to Petitioners' Comment 7 *supra.*

Comment 16

Because on three separate occasions the Department requested information from Union regarding its early-payment discount policies for U.S. customers, and Union failed to provide the requested information, petitioners argue that the Department should adopt BIA with respect to those discounts. Petitioners suggest, as a reasonable adverse inference, that the Department assume that Union granted an early-payment discount on any transaction where payment was received before the due date.

Union claims that it was fully responsive to the Department with regard to information about this discount and that it was fully verified. Union states that its discount ''policy'' does not matter; all that matters is that it did extend early-payment discounts, that it did report them, and that they were verified.

Department's Position

We agree with respondent. Although Union did not explain its policy with respect to early-payment discounts in the U.S. market, the Department was able to ascertain that Union in fact extended certain early-payment discounts, and to verify to its satisfaction the amount of such discounts. *See* Union's SVR of May 16, 1995, at 33.

Comment 17

Petitioners argue that the Department must revise Union's reported G&A expenses to account for expenses incurred by the Dongkuk Steel Mill (''DSM'') group as a whole. As part of its decision to collapse Union and DKI, the Department determined that neither Union nor DKI operates as a single independent entity, but rather as interrelated entities both under the control of the Chang family through its ownership in DSM. In prior cases, the Department has adjusted a respondent's submitted data to include an allocated portion of the parent company's expenses. The record in this case, petitioners assert, clearly indicates that expenses were incurred at the headquarters or DSM group level (*e.g.,* chairman's salary, group product brochures, group training center, and personnel welfare center, office costs, security expenses, entertainment expenses, *etc.*).

Since Union failed to furnish complete information regarding these expenses, petitioners argue that the Department should, as BIA, increase Union's calculated G&A expense by the ratio of all G&A expenses incurred at DSM over the consolidated DSM group's cost-of-sales.

Union contends that the Department should reject the petitioners proposed combination of DSM's and Union's G&A expenses. Union argues that there is no parent-subsidiary relationship between the two entities and that there are no DSM general expenses to attribute to Union's activities. Union also counters that Dongkuk Steel Mill was a respondent in the 1993 antidumping investigation of *Certain Cut-to-Length Carbon Steel Plate from the Republic of Korea,* and in that case the Department concluded that Dongkuk Steel Mill's G&A expenses were appropriately allocated to Dongkuk Steel Mill's activities and not to a group.

Department's Position

We disagree with petitioners. For the final results, we did not combine Dongkuk Steel Mill and Union's general and administrative costs. It is the Department's normal practice to include a portion of the G&A expense incurred by affiliated companies on the reporting entity's behalf in total G&A expenses for COP and CV purposes. However, in this specific case, we did not identify any allocable parent company costs after reviewing the information on the record. *See, e.g., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy,* 60 FR 31981, 31992 (June 19, 1995); *Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia,* 59 FR 4023, 4027 (January 28, 1994).

Comment 18

Petitioners contend that, in contrast with the preliminary results in the parallel administrative review of certain corrosion-resistant carbon steel products from Korea, the Department's ''model-match'' computer program accidentally eliminated the fixed 20 percent BIA difmer adjustment with respect to Union's price-to-price sales comparisons. Petitioners request that, if the Department does not revise its BIA methodology as discussed above, the Department at the very least make the cold-rolled model-match program conform with the corrosion-resistant model-match program in order to ensure that the BIA difmer methodology is correctly applied.

Union counters that petitioners are themselves in error when they claim the Department's model-match program contains an error. Union believes that the lines questioned by petitioners set the limits on permissible matches in the home market. Without them, any given U.S. sale could be matched to any home-market sale, which was clearly not the Department's intention in the preliminary results. Union states that the Department's preliminary methodology was to set Union's difmer at 20 percent for the margin calculation, but only after a proper model match had been conducted to exclude comparisons resulting in a difmer of more than 20 percent. The model-match program exactly reflects that intention, according to Union.

Department's Position

This comment is rendered moot as the Department is applying a different partial BIA methodology, which does not comprise a flat 20 percent difmer adjustment, for purposes of these final results. Where DKI sales are used as a basis for comparison, the Department is using the difmers reported by DKI, capped at 20 percent of the cost of manufacture of the U.S. product, which is the Department's usual practice. Because none of DKI's above-cost home-market sales were similar to any of Union's U.S. sales, the Department based FMV on CV (*see* the Department's response to Petitioners' Comment 11 *supra*).

Comment 19

Petitioners assert, and Union concurs, that, although the Department correctly created a new, ''other'' thickness tolerance category to account for home-market sales by DKI, it failed to adjust the numerical weighting factors associated with Union's *U.S.* sales to conform with the weighting factors associated with *DKI's home-market* sales, thereby making it impossible for any home-market sale to be considered an identical match to a U.S. sale, even though the home-market product may in fact be identical. This error also allegedly undermines the accuracy of the selection of most similar home-market matches. Petitioners and Union request that the Department correct this ministerial error in the model-match program for purposes of the final results.

Union adds that code 16, created for the new, ''other'' thickness tolerance category, should be corrected to one of the other codes, if necessary on a sale-by-sale basis. Otherwise, the problem identified by petitioners remains, in that ''identical'' products are not compared. Union presumes that the Department did not intend for all DKI sales to be within a single hierarchy category differentiated from those already defined. If the Department were to modify its model-match hierarchy to make DKI sales a category unto themselves, Union argues, the Department would need to explain its reasons for such a change.

Department's Position

We agree in part with both petitioners and respondent. For purposes of these final results, we have harmonized the format of the numerical weighting factors for thickness tolerance in the model-match programs, thereby insuring that the program will function as intended. In addition, we have coded DKI material so that it most closely approximates half-mill-tolerance material produced and sold by Union in the U.S. market. The necessity for this additional thickness-tolerance category (''16'') arises from differences in thickness tolerance between Union's ''standard'' and ''half-mill'' material and that of DKI.

Because the only price-to-price comparisons we are making for purposes of these final results are those involving home-market sales by DKI, none of which are identical in physical characteristics to any U.S. sale by Union, petitioners' comment regarding the impossibility for any home-market sale to be considered an identical match to a U.S. sale is moot. By harmonizing the format of the weighting factors, DKI sales of similar, contemporaneous merchandise will now be matched to U.S. sales by Union, as the Department originally intended.

Union's presumption that the Department did not intend for all DKI sales to be within a single hierarchy category differentiated from those already defined is, in fact, incorrect. DKI reported only one thickness tolerance, which it categorized as ''standard,'' but provided no record evidence of any thickness-tolerance differences that may have existed during the review period. It was, and still is, the Department's intention to modify its model-match hierarchy to make DKI sales a category unto themselves. As the Department stated in its preliminary sales analysis memo dated September 21, 1995,

> We disagree, however, with DKI's categorization of its thickness tolerances as ''standard.'' Based on the Department's model-matching criteria, we have concluded that, DKI's thickness tolerances are much closer to U.S. ''half-mill'' tolerances than to Union's ''standard'' tolerances. We have therefore created a new category of thickness tolerance—called ''other''—for DKI, permitting the comparison of Union's U.S. sales of ''half-mill'' to DKI's home-market sales.

Since the verification, Union has not submitted any record evidence that would lead the Department to change its analysis. Therefore, we have maintained the new, ''other'' thickness tolerance category (coded ''16'') in the model-match program.

Comment 20

Petitioners allege that section 2 of the Department's margin calculation program regarding Union accidentally created additional U.S. observations, or ''clones,'' which were inadvertently included in the Department's analysis. The problem arises when two products are sold in the home market that are equally similar to the comparison U.S. product. In such cases, the program weight-averages the prices of the two home-market products and calculates a single transaction specific margin (''UMARGIN'') by comparing that weighted-average home-market price to the U.S. price. However, where one of the equally similar home-market products fails the cost test, but the other does not, the program inadvertently calculated two-transaction specific margins using the same U.S. sale. Specifically, for the same U.S. transaction, the program calculated one price-to-price margin using the weighted average home-market price of the equally similar product that does not fail the cost test, and another price-to-CV margin to account for the equally similar product that failed the cost test. The net effect of this inadvertent programming error is to reduce Union Steel's calculated margin. Petitioners therefore request that the Department correct this ministerial error and eliminate the second transaction specific price-to-CV margin for purposes of the final results.

Union agrees with petitioners with regard to the problem but not to the solution. According to Union, the Department's rule in cases in which there are two equally similar products is to use an average of both in the calculation of FMV, regardless of the basis of computation for FMV. If the Department incorrectly calculated separate margins with respect to each of the home-market products where one of the products was below cost, Union argues, then to remedy this error the Department should average the two FMVs.

Petitioners, according to Union, would have the Department change its policy and base its margin calculation only on the price-based FMV, without providing any compelling reasons to do so. Indeed, Union asserts, the Department has a well established policy of using the most similar product comparisons, regardless of whether the basis for FMV is price or CV. Ironically, Union avers, for years respondents have argued that the Department not rely on CV when a similar home-market product would permit a price comparison—but U.S. producers have steadfastly opposed such a notion, and the Department has consistently sided with the latter. In this instant case, Union contends, the Department's policy leads to two equally similar comparison products, and consistent with its policy, the Department should average the two FMVs.

Department's Position

We agree with petitioners and have fixed this programming error for the final results. It is the statutory preference to calculate FMV based on home-market sales rather than CV. As noted in the Department's position on Comment 11, it is our preference based on the facts of this case to match U.S. sales to DKI's home-market sales whenever there are appropriate matches. Accordingly, in any instances in which there are equally similar comparison products, and certain of these comparisons would result in using FMV based on a DKI price-to-price comparison and others would result in FMV based on CV, we have chosen the match or matches based on price-to-price comparisons.

Comment 21

Petitioners claim that the Department should treat Union's U.S. sales through UA as ESP transactions for purposes of the final results. Petitioners base this claim on three broad reasons: (1) Union's U.S. sales through UA do not meet the statutory definition of purchase-price transactions; (2) the limited factual information on the record only supports a conclusion that the subject sales are ESP transactions; and (3) declarations made on Customs form 7501 clearly indicate that UA is the purchaser of the imported merchandise.

In determining whether a U.S. sales transaction meets the statutory definition of purchase price, the Department looks at whether (a) the merchandise was shipped directly from the manufacturer to the first unrelated purchaser in the United States, without being introduced into the inventory of the related shipping agent; (b) direct shipment from the manufacturer to the unrelated parties was the customary commercial channel for sales of the merchandise between the parties involved; and (c) the related selling agent in the United States acted only as a processor of sales-related documentation and a communications link with the unrelated U.S. buyers. Petitioners claim that the first two factors may be indicia pointing to the conclusion that sales took place in a foreign country for exportation to the United States, but are not dispositive of the issue. In the steel industry, petitioners contend, these factors are not informative because most international shipments are shipped directly to the customer and not carried in inventory. Therefore, even if the merchandise is shipped directly to the customer and not placed in inventory in the United States, more evidence is needed to conclude that a sale is a purchase-price transaction, according to petitioners. Under the circumstances, they argue, the focus must be on the third factor of the Department's test.

Petitioners contend that the record evidence demonstrates that UA acts as more than a mere processor of sales-related documentation on behalf of Union's U.S. purchasers. They state that UA is involved in the following activities: the arrangement and payment for warehousing expenses on U.S. sales; the financing of U.S. sales; and the hiring of commission agents and entrance into commission arrangements with same. Petitioners state that UA reported substantial inventories of steel products in 1993, and that UA will, for certain warranties, independently authorize a compensatory cash discount without contacting Union. Petitioners further emphasize that:

- UA has the authority to grant rebates;
- UA is engaged in advertising on behalf of Union;
- UA assumes the seller's risk pursuant to the terms of the invoices issued to U.S. customers;
- UA is the carrier of Union's marine insurance policy and pays the premium for that insurance;
- UA is the importer of record and pays U.S. duties, brokerage, and handling on U.S. sales;
- UA pays Union the transfer price for the merchandise and in turn is paid by the U.S. customer, thereby bearing the risk of non-payment by U.S. customers; and
- UA takes title to the merchandise at the time it is loaded in Korea.

Petitioners assert that UA repeatedly declared on Customs form 7501 (''Entry Summary'') that it purchased the merchandise. Therefore, the transaction between Union and UA is a purchase ''for export to the United States,'' so that the transactions between UA and its unrelated purchasers are necessarily sales ''in the United States'' meeting the definition of ESP transactions, in petitioners' view. They add that UA entered the merchandise in question for appraisement at its ''transaction value,'' which is defined as ''the price actually paid or payable for the merchandise when sold for exportation to the United States.'' If the importer of record (UA) has entered the merchandise at the price established between the related parties as the transaction value, then by definition the sale was for export to the United States and the sale between UA and the first unrelated U.S. purchaser cannot also be the sale for export to the United States. It follows, say petitioners, that the latter sale must be an ESP transaction.

Respondent answers that the Department properly treated the vast majority of Union's U.S. sales through UA as PP sales. The terms of sales are set prior to importation. Union claims that petitioners concede that the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into inventory of the related shipping agent, and direct shipment was the customary channel of distribution.

With regard to whether UA acted only as a processor of sales-related documentation and a communications link, Union points outs the following:

- UA does not warehouse the imported merchandise;
- UA does not sell from inventory;
- UA does not finance U.S. sales;
- UA does not have the authority to authorize a cash discount for warranty claims;
- Union sets guidelines for hiring of any commission agents;
- UA does not enter into rebate agreements;

• UA does not engage in any significant advertising on behalf of Union;

• Union ultimately assumes the seller's risk pursuant to the terms of the invoices issued to U.S. customers;

• UA's procurement of marine insurance is a normal function of a related selling agent; and

• UA's role as the importer of record and payment of U.S. duties, brokerage, and handling on U.S. sales is a normal function of a related selling agent.

Union further states that although UA issues commercial invoices as Union's proxy, it merely processes sales-related documentation, Union Steel bearing the final responsibility for the transaction. Union notes that whether or not UA takes title to the merchandise at the time of loading in Korea is irrelevant, since it must take title of the merchandise in order to resell it to an unrelated customer in the United States. Thus, in respondent's view, Union has strictly limited the role of UA to that of a conduit for Union's sales and processors of sales-related documentation and these sales should be treated as purchase price.

Department's Position

We agree with respondents. We determined that purchase price was the appropriate basis for calculating USP. Typically, whenever sales are made prior to the date of importation through a related sales agent in the United States, we conclude that purchase price is the most appropriate determinant of the USP based upon the following factors: (1) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; (2) direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers. *See, e.g., Certain Stainless Steel Wire Rods from France: Final Determination of Sales at Less than Fair Value,* 58 FR 68865, 68868–9 (December 29, 1993); *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 50343–4 (September 27, 1993). These criteria were first developed in response to the Court of International Trade's decision in *PQ Corporation* v. *United States,* 652 F. Supp. 724, 733–35 (CIT 1987). These criteria have also been considered in cases with indirect purchase-price transactions involving exporters and their U.S. affiliates. *See, e.g., Zenith Electronics Corp.* v. *United States,* Consol. Ct. No. 88–07–00488, Slip Op. 94–146 (CIT 1994).

Furthermore, the Department has recognized and classified as indirect PP sales transactions involving selling activities similar to those of UA's in other antidumping proceedings involving foreign manufacturers and their related U.S. affiliates. *See, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 57 FR 42942, 42950–1 (September 17, 1992). In the present review, for sales considered to be purchase price in the preliminary results we found that: (1) Union's sales through UA, its related sales agent in the United States, are almost always shipped directly from Union to the unrelated buyer and only rarely are introduced into UA's inventory; (2) Union's customary channel of distribution is direct shipment, although certain limited sales are normally introduced into UA's inventory; (3) UA performed limited liaison functions in the processing of sales-related documentation and a limited role as a communication link in connection with these sales. UA's role, for example, in extending credit to U.S. customers, processing of certain warranty claims, limited advertising, processing of import documents, and payment of cash deposits on antidumping and countervailing duties, is consistent with a purchase-price classification. These selling services as an agent on behalf of the foreign producer are thus a relocation of routine selling functions from Korea to the United States. In other words, we determined that UA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales. More specifically, we regard selling functions, rather than selling prices, as the basis for classifying sales as purchase price or ESP. While in some cases certain merchandise sold by Union was entered into UA's inventory, this merchandise was sold prior to the importation of the merchandise, but not from UA's inventory. When all three of the factors already described for sales made prior to the date of importation through a related sales agent in the United States are met, we regard those selling functions of the exporter as having been relocated geographically from the country of exportation to the United States, where the sales agent performs them on behalf of the exporter. The substance of the transaction or the functions do not change whether these functions are performed in the United States or abroad. In this case, Union has transferred these routine selling functions to its related selling agent in the United States and the substance of the transaction is unchanged.

Respondents' Comments

Dongbu: Comment 1

According to respondent, the Department is required to make an additional upward adjustment to USP to account for export subsidies subject to countervailing duties. Citing Article VI¶ 5 of the General Agreement on Tariffs and Trade (Uruguay Round Agreements Act, Pub. L. 103–465, Th. § 101 (approving the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Annex 1A 1(a)), respondent states that it provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision was implemented into U.S. law by section 772(d)(1)(D) of the Tariff Act of 1930, amended, 19 U.S.C. § 1677a(d)(1)(d). Thus, argues respondent, purchase price and exporter's sales price shall be increased by the amount of any countervailing duty imposed on the merchandise to offset the export subsidy. Respondent also asserts that, during the original LTFV investigation of flat-rolled carbon steel products from Korea, the Department made upward adjustments to USP of this type. *See Final Determinations of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37191 (1993). Dongbu states that such an adjustment is required both for assessment purposes and for purposes of determining the cash deposit rate applicable to future entries. As reported in the *Final Determinations,* the level of export subsidies determined in the final countervailing duty determination for cold-rolled products was 0.05 percent *ad valorem*. Because Dongbu has made deposits reflecting these amounts in conjunction with the entries of cold-rolled flat products under review in this proceeding, Dongbu claims it is therefore entitled to a further adjustment of USP in this amount.

Petitioners agree with respondent provided that the Department fully implements the statute, which they assert also requires under section 772(d)(2)(A) of the Act that USP also be reduced by ''(A) except as provided in paragraph (1)(D), the amount if any, included in such price, attributable to any additional costs, charges and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States' (19 U.S.C. § 1677a(d)). Thus, petitioners argue that if the Department adds the amount of the export subsidy to USP, it should also treat the remaining part of the countervailing duties paid on those shipments as costs, charges and expenses, and United States import duties in accordance with the statute. Thus, petitioners agree with respondent that the amount of the export subsidy should be added to USP, but only if the Department also treats the countervailing duties paid on those shipments as costs, charges and expenses, and U.S. import duties, as defined by the statute. Petitioners conclude by stating that for Dongbu's direct PP sales, any export subsidy adjustment should be calculated against the reported gross unit price net of any movement charges incurred outside Korea, and exclusive of any duty drawback and value-added (''VAT'') adjustments. For indirect PP sales, petitioners state that the appropriate base for calculating the export subsidy adjustment is the entered value of the subject merchandise, which reflects the f.o.b. (freight-on-board) foreign port price of the merchandise.

Department's Position

We agree with petitioners and respondent in their arguments that Dongbu is entitled to a 0.05 percent *ad valorem* adjustment to the USP. However, we disagree with petitioners regarding their contention that, if the portion of the countervailing duties attributable to export subsidies is added to USP, any remaining countervailing duties paid on those shipments must also be treated as costs, charges and expenses, and United States import duties. As noted earlier in our comments, we determined in *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review* (60 FR 44009, 44010—August 24, 1995) that making an additional adjustment to USP for the same antidumping duties that correct the price discrimination between the U.S. and home markets would result in double-counting, and inconsistency with administrative and judicial precedent. The same principle applies with regard to countervailing duties. Article VI¶ 5 of the General Agreements on Tariffs and Trade (''GATT'') provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' Section 772(d)(1)(D) of the Act implements this provision.

Comment 2

Respondent argues that the Department erred by including imputed inventory carrying expenses in the selling expenses used to calculate CV for the preliminary results of this review. Respondent notes that the Department included imputed credit expenses and inventory carrying expenses in CV, and that while this methodology might be acceptable if the comparison were being made to ESP, the inclusion of imputed inventory carrying expenses in CV is contrary to long-standing practice at the Department when the comparison is being made to purchase price rather than ESP sales. Specifically, respondent notes that despite its inclusion of inventory carrying expenses in CV for the preliminary results of this review, the Department did not make an additional adjustment to the interest rate factor for CV to account for interest expenses associated with the carrying of inventory. They contend that this is contrary to long-standing precedent and leads to double-counting of inventory carrying expenses. Respondent asserts that should the Department improperly include an amount for inventory carrying expenses in CV, it must also make an additional adjustment to the interest rate factor to account for inventory carrying expenses. The proper approach to these errors is to simply exclude imputed inventory carrying expenses from the CV calculations consistent with long-standing practice.

Petitioners counter that the Department appropriately included in CV the sale-specific inventory carrying charges reported by Dongbu, whether Dongbu's sales are classified as either PP sales or ESP sales. They state that during this review, Dongbu incurs inventory carrying costs for home-market sales of subject merchandise, and that it reported sales-specific inventory carrying costs in its February 15, 1995 response. *See* Letter from Morrison & Foerster to the U.S. Department of Commerce, Case No. A–580–814 at 15 and Exh. B–40 (Feb. 15, 1995). Thus, according to petitioners, the Department included the sale-specific inventory carrying costs in CV in the preliminary results of this review, and given that the sale-specific amounts reported by Dongbu provide the most accurate measure of Dongbu's costs of holding subject merchandise in inventory, the Department should continue to use the sale-specific inventory carrying charges reported by Dongbu in calculating CV for the final results of this review. Petitioners further argue that since the Department's practice has been to reduce the respondent's reported financing costs by an amount that reflects the interest costs associated with holding inventory, the Department should revise its calculation of Dongbu's financing costs to eliminate the double-counting of inventory carrying charges in CV for the final results.

Department's Position

We agree with respondent. For the final results, we have excluded imputed inventory carrying costs from Dongbu's CV calculation, because Dongbu reported only PP sales. The Department normally includes inventory carrying costs as an indirect expense in cases involving ESP transactions. In ESP transactions, the imputed inventory carrying costs consist of the cost of financing the inventory from the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unrelated customer. To avoid the double counting of interest expense, we allow the respondent to offset its CV interest expense by the imputed inventory carrying costs. However, the Department does not normally include this cost or the related offset in PP sales.

Comment 3

Respondent contends that for purposes of the preliminary results of this review, the Department erred by excluding certain adjustments from the gross unit price used to determine VAT on home-market sales. Respondent argues that although the Department followed the newly adopted ''Zenith footnote 4'' methodology for determining adjustments to USP for home-market consumption taxes (*see Federal Mogul Corp.* v. *United States,* 63 F. 3d 1572 (Fed. Cir. 1995)), the Department made an error in determining the absolute amount of VAT paid on home-market sales where the customer was subsequently granted this adjustment. Specifically, respondent notes, the Department improperly calculated the amount of VAT paid on home-market sales by applying the statutory 10 percent rate to a gross unit price net of applicable adjustments when, in fact, according to the Korean law and practice, VAT must be paid on the full gross unit price.

Petitioners argue that in calculating VAT taxes for the preliminary results of this review, the Department has appropriately deducted certain adjustments from the gross unit price used to determine the tax base. According to petitioners, at the time Dongbu's sales transactions occur, these adjustments are not known and should therefore not be deducted from the tax base at the time of the transaction. They contend that although these adjustments may not be deducted from the VAT base at the time of sale, it is not clear whether the VAT paid by Dongbu's customers ultimately is net of the same adjustments. Petitioners argue that if the VAT paid on the amount of the adjustment were not refunded to the customer, the effective tax rate incurred by the customer would be in excess of the statutory rate of 10 percent; and that the payment of these adjustments therefore would be accompanied by a refund of the VAT amounts associated with the adjustment.

Department's Position

We agree with respondent. Dongbu has provided information indicating that under Korean law, VAT taxes associated with home-market sales are assessed based on the price of goods and services at the time of delivery, and that certain adjustments made to the price after the goods and services have already been delivered do not result in adjustments to VAT taxes already paid.

Union: Comment 1

Union contends that the Department's decision to collapse Union and DKI in the instant review is contrary to the Department's practice. Not only does a strong possibility of price manipulation not exist, according to Union, but the Department's standard of a strong possibility of price manipulation *per se* violates respondents' right to due process. In determining whether two companies should be collapsed, the Department should look to evidence of actual manipulation, rather than to suspicion or speculation of possible manipulation at an unspecified future time. If the Department is concerned about the possibility of price manipulation in the future, it should consider any evidence of such manipulation in future reviews.

Petitioners assert that the Department's decision to collapse the two entities is entirely consistent with record evidence. Petitioners object to Union's statement, for the first time on the record of this proceeding, in its case brief that ''the Department's standard of 'strong possibility of price manipulation' violates respondent's right of due process.'' In not one of its four submissions contesting petitioners' collapsing request did Union ever claim that the Department's standard for collapsing related parties violates respondents' due process rights. If anything, petitioners assert, Union explicitly endorsed the Department's standard by not contesting it directly and addressing each of the four criteria used to ascertain whether the standard has been met. Petitioners strongly protest Union's eleventh-hour raising of this due process argument nine months after the collapsing decision was made and request that the Department dismiss it outright. In any event, petitioners maintain, the Department's four-point standard is entirely reasonable and has been applied by the CIT. *See, e.g., Nihon Cement Co.* v. *United States,* Slip Op. 93–80 at 48–54 (CIT May 25, 1993). To require parties to demonstrate actual price or production manipulation would impose a quasi-insurmountable burden on petitioners.

Department's Position

The Department's practice of collapsing affiliated parties if the record evidence indicates a strong possibility of price manipulation is longstanding and was upheld by the CIT in *Nihon Cement Co.* v. *United States,* Slip Op. 93–80 at 48–54 (CIT May 25, 1993). Therefore, Union's argument that the Department's test is legally deficient is unfounded. Moreover, Union has in no way been denied due process in this determination. Throughout the course of this proceeding, Union had ample opportunity to submit evidence and arguments with regard to this issue. We note that at no time during the period between the Department's decision to collapse (May 22, 1995) and the preliminary review results (December 15, 1995) did Union ever challenge the Department's collapsing test.

Comment 2

Union claims that the Department erred in (1) concluding that Union had understated its U.S. credit expenses by not including bank charges therein, and (2) increasing Union's U.S. credit expenses by the amount of those charges. In fact, Union maintains, it included its U.S. bank charges in U.S. brokerage and handling expenses, so that they were double-counted by the Department. In addition, Union claims, the Department compounded its error by mistakenly dividing two years' worth of interest expenses by 18 months' worth of short-term borrowings.

Union urges the Department, for purposes of the final results, to follow its own practice and treat bank charges as selling expenses. Union claims to have reported its bank charges on a sale-by-sale basis, which is the most accurate form of reporting. Also, respondent asserts, including bank charges in an interest-rate calculation is illogical, since a bank charge need not be connected to the time value of money, but can simply consist of a flat fee for services rendered.

Petitioners reply that Union's claims regarding double-counting are unsubstantiated. Petitioners note that Union's claims that it included transaction-specific bank charges in its reported U.S. brokerage and handling expenses is not supported by any sample calculations or documents. Petitioners state that it is the Department's practice to include bank charges in credit expenses when they are not elsewhere reported. Because of the absence of specific data pertaining to bank charges alone, petitioners agree that the Department had no alternative but to use Union's combined interest and bank charge data for the two fiscal years.

Department's Position

We agree in part with both petitioners and respondent. As there is no evidence on the record supporting Union's claims that it included bank charges in its reported brokerage and handling expenses, we have increased Union's reported credit expenses to account for these bank charges. We acknowledge our error, however, in dividing two years' worth of interest expenses by 18 months' worth of short-term borrowings, and have corrected this error for purposes of these final results by prorating the short-term borrowings used in the denominator to 24 months.

Comment 3

Union disagrees with the Department's treatment of its home-market warehousing expenses as indirect selling expenses, and contradicts the Department's statement that these expenses were evenly allocated across-the-board to all home-market sales. In fact, Union affirms that all warehousing expenses other than labor were traced to the particular areas devoted to subject and non-subject merchandise, because Union separates warehouses subject and non-subject merchandise, and thus can determine the proportion of warehousing expenses attributable to each. Union also maintains that a selling expense is not indirect simply because it occurs prior to sale. For these reasons, and because the warehousing expenses in question are attributable to a later sale of the subject merchandise, Union requests that the Department treat these warehousing expenses as direct for purposes of the final results.

Petitioners respond that Union stores three broad, distinct types of merchandise in the same warehouse—cold-rolled, corrosion-resistant, and pipe products. Petitioners state that Union did not link specific warehousing charges to specific sales, but rather allocated costs based on the square footage dedicated to each product type and on the total quantity of each product type warehoused. Petitioners believe that the Department's preliminary results correctly denied Union's claim that these expenses be classified as direct.

Department's Position

We agree with petitioners. Union did not tie warehousing expenses to specific sales, but merely allocated them. The amount reported by Union on its computer tape for this expense in Korean wŏn is identical for all sales transactions where a warehousing expense was claimed, regardless of the length of time the merchandise was actually warehoused. Therefore, we do not consider these expenses to be direct.

Comment 4

Union disagrees with the Department's treatment of pre-sale inland freight expenses in the home market as indirect. Union argues that the Department must examine the facts of each case to determine whether warehousing and pre-sale freight are so linked that they must necessarily be treated in the same fashion. In the final results of redetermination on remand (January 5, 1995) pursuant to *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* Slip Op. 94–151 (1994), the Department noted that ''warehousing and movement expenses are, for analytical purposes, inextricably linked'' and ''if pre-sale warehousing is an indirect expense, then, in the absence of contrary evidence, pre-sale movement expenses should also be treated as an indirect expense.'' Earlier in the case, the Court had stated that ''if the pre-sale warehousing expense in this case is not shown to be a direct expense, then it follows that the cost of transporting the cement to the warehouse is also not shown to be a direct expense.''

Union argues that in this case, pre-sale freight and warehousing are not inextricably linked. Union claims that pre-sale freight was constant, since the merchandise was moved over the same route for all sales. Therefore, each ton sold from the warehouse led to an exactly identified increment to costs—the amount of the pre-sale freight—and the expense was incurred on a one-on-one basis with each unit of subject merchandise sold. Therefore, Union maintains the expense in question is clearly direct.

Petitioners respond that the Department correctly determined that Union's pre-sale freight expenses were indirect. Petitioners state that the Department's standard is clear: pre-sale warehousing and freight expenses are inextricably linked; thus, in the absence of contrary evidence, if pre-sale warehousing is an indirect expense, so too must be pre-sale freight. Petitioners note that it is always true that each ton shipped leads to an additional charge for freight, but this does not mean that pre-sale freight is always a direct selling expense.

Department's Position

In the preliminary review results, the Department stated that it ''considers pre-sale movement expenses as direct selling expenses only if the movement expenses in question are directly related to the home-market sales under consideration. In order to determine whether pre-sale movement expenses are direct under the facts of a particular case, the Department examines the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse must also be indirect. Conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that, although pre-sale warehousing expenses in most cases have been found to be indirect selling expenses, these expenses may be deducted from FMV as a circumstance-of-sale adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration.'' *See Preliminary Results of Review; Certain Cold-Rolled Carbon Steel Flat Products from Korea* (60 FR 65284, 65287—December 19, 1995). The Department is continuing to treat Union's pre-sale home-market inland freight expenses as indirect, because Union did not distinguish between pre- and post-sale warehousing expenses or demonstrate that these expenses were directly related to the sales under consideration.

Comment 5

Union argues that the Department should differentiate Union's painted products according to specific paint types, because (1) there are significant cost, price, and commercial differences among Union's painted products; (2) these differences demonstrate that Union's customers perceive significantly different applications for such products; and (3) if the Department compares different paint types, it must make an appropriate difmer adjustment.

Petitioners state the Department was correct not to revise the existing paint categories for the preliminary results of this review and should also reject this argument for the final results. Petitioners note that Union's arguments do not address the criteria used by the Department to establish categories of products and determine whether certain products may be compared and are not supported by the record evidence. Petitioners state that Union ignores that the primary basis for creating product categories is physical characteristics. Thus, according to petitioners, the Department can accept Union's proposed paint categories only if Union demonstrates that the physical characteristics of the various paint types are so dissimilar that the paint types cannot be compared—which Union has not done. Petitioners cite *Koyo Seiko Co.* v. *United States,* Slip Op. 94–1363 at 15 (Fed. Cir. Sept. 20, 1995) which states that products with significant physical similarities need not be ''technically substitutable, purchased by the same types of customers, or applied to the same end use'' in order to be compared. Petitioners add that the record does not support Union's contention that its different paint types exhibit significant differences in cost or price.

Petitioners reject the notion of making a difmer adjustment for differences in paint types. Petitioners state that it is the Department's position in these flat-rolled proceedings that it will not make adjustments to account for differences between physical characteristics of U.S. and home-market products when the products are identified by the same control number. If products have the same control number, according to petitioners, they are in effect identical for purposes of this review and no difmer adjustment should be granted.

Department's Position

We agree with petitioners. As stated in our memorandum to the file of August 10, 1995, discussing our preliminary results of review, Union provided insufficient and non-compelling information to support the necessity for differentiating additional types of painted products. Union did not demonstrate how each of the proposed additional paint types possesses physical characteristics that are significantly different from those of the other proposed paint types, and how each paint type is intended for significantly different applications and uses. Therefore, we did not create additional paint categories for purposes of these final results.

Comment 6

Union argues that the Department should not combine the financing expenses of Union and DKI with those of other member companies of the Dongkuk group because this collapsing of interest expense is entirely at odds with the Department's practice. Union states that it is the Department's established policy to calculate interest expense from the costs of borrowing incurred by the respondent and its related parties only when the companies are consolidated in the normal course of business. Union states that there are two fundamental reasons for this. First, the accounting practicality of consolidating different companies, particularly with respect to cost of goods sold, demands that an audited consolidated statement be generated in the normal course of business. Second, the parent into which the subsidiary is consolidated is assumed to control the financing decisions of the subsidiary. *See Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon Alloy Steel, Standard, Line and Pressure Pipe from Italy* (60 FR 31981, 31990 June 19, 1995).

In the instant review, according to Union, neither of the two standards articulated above applies to Union or DKI. Union states that the financial statements of Union and DKI are not consolidated into those of DSM. Union also states that no evidence on the record suggests that the financial decisions of Union and DKI are controlled by DSM. Just because two entities have been collapsed, Union claims, is not necessarily a reason to calculate circumstance-of-sale adjustments or cost adjustments on a collapsed basis. For example, selling expenses are not calculated for the group as a whole, but specifically; the COM is calculated on a company-specific basis, unless the collapsed entities have identical control numbers, which they do not; general expenses reasonably associated with the COM remain company specific. Likewise, Union argues, there is no reason to combine interest expenses, which are properly allocated on a company-specific basis. Union cites to our *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Semiconductors of One Megabit and Above from the Republic of Korea* (58 FR 15467, 15475—March 23, 1993) (''*Korean DRAMS*''), where the financial statements of two companies that were members of the same *chaebol* were not consolidated in the normal course of business, and where the Department did not require the respondent to submit a combined interest rate. Indeed, Union asserts, when the respondent sought to persuade the Department to use the interest expense for the group as a whole, the Department rejected the idea on the grounds that ''[t]he Department does not perform an audit at verification; rather, verification relies on audited records.'' Similarly, Union points out that in its *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea* (56 FR 16305, 16313 '' April 22, 1991) (''*Korean PET Film*'') the Department held that, absent evidence of inter-company production financing arrangements, a respondent's own financial statements provide the most accurate picture of its financing activities for the production of subject merchandise.

Additionally, Union states that the Department's calculation of its financing factor was incorrect because it failed to offset DKI and DSM's financing costs with short-term interest income. The respondent argues that the Department's calculation only offset Union's financing costs with short-term interest income. Therefore, the Department's calculation did not make an appropriate ''apples-to-apples'' comparison.

Petitioners contend that the Department properly combined Union's interest expense with the interest expense of other members of the Dongkuk group. Petitioners state that this decision is consistent with the Department's normal practice because the companies are under common control and produce similar subject merchandise. Petitioners contend that capital acquisition costs are fungible and that any borrowing by Union, DKI, or DSM may be used for a variety of beneficial purposes for the group as a whole. Therefore, petitioners believe that the Department should continue to use the combined interest expenses of Union, DKI and DSM in its calculation for the final results of this instant review.

In fact, petitioners claim, contrary to Union's statements, the Department did reduce both DKI's and DSM's reported interest expense by each company's respective short-term interest income. Accordingly, the Department should simply ignore Union Steel's comments with respect to this issue.

Petitioners also state that the Department deducted an appropriate short-term interest income figure in its net financing factor calculation. Furthermore, they state that the respondent's argument of requiring an apples-to-apples comparison is inappropriate in this circumstance because symmetrical results are not necessary in this step of the net financing calculation.

Department's Position

For the final results, we calculated a combined net interest factor using Union's, DSM, and DKI's audited financial figures obtained from verification exhibits, respondent's submissions and public records. This methodology of calculating a single net interest factor is consistent with our longstanding practice for computing interest expense in cases involving parent-subsidiary corporate relationships. DSM's ownership interest in Union and DKI places the parent in a position to influence Union's financial borrowing and overall capital structure. We note that, contrary to Union's assertions that Union is an independent company and not controlled by DSM, the two companies share common directors and related stockholders. Based on this information, it is difficult to see how Union's operations are independent of its parent to such an extent that we should ignore our normal practice of computing interest. *See Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand* (60 FR 10552, 10557—February 27, 1995). Additionally, we find it appropriate to collapse the financing costs of these three companies in this instant review because we consider that the financing costs of the parent and its subsidiaries to be fungible.

Furthermore, the facts of this instant review differ from both the *Korean DRAMS* and *Korean PET Film* with regard to combining interest expense factors. In *Korean DRAMS* and *Korean PET Film*, the respondents requested that the Department combine limited brother-sister companies to derive a consolidated group-level interest expense factor. In those cases, however, the Department determined that a consolidated group-level interest factor was inappropriate because, while the respondents' own financial statements were audited, those of the sister companies and the group-level financial statements were unaudited. As the Department stated in *Korean DRAMS,* ''[a]bsent detailed testing usually associated with an audit, the Department cannot rely on the statements as submitted.'' *See* DOC Position on Comment 24, 58 FR 15475. Not only, therefore, would consolidating the entities in question have placed an undue burden on the Department to review unaudited information, but the respondents' own audited financial statements provided the most accurate reflection of the cost of financing the production of subject merchandise. In the instant review, by contrast, each of the entities in question—Union, DSM, and DKI—prepared separate audited financial statements, which we could therefore combine to calculate a group-level interest expense factor.

Additionally, we agree with the respondent in that it is the Department's practice to allow a respondent to offset financial expenses with interest earned from the general operations of the company. *See, e.g., Timken* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994). The Department does not, however, offset interest expense with interest income earned on long-term investments. *See Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy* (60 FR 31981, 31991—June 19, 1995). Therefore, for the final results we offset the combined financing costs by the respective short-term interest income of the three entities.

Comment 7

Union argues that the Department should not include the company's ''special depreciation'' that was reported as an extraordinary item on its audited financial statement in the cost of production of subject merchandise. Union contends that the Department's established policy with respect to this kind of expense is to exclude the cost because it relates solely to tax law and represents no real additional cost to the company. *See Final Determination of Sales at Less than Fair Value; Stainless Steel Angles from Japan* (60 FR 16608, 16617—March 31, 1995) (''*Angles*''). Therefore, Union believes that the Department should follow the precedent established in that determination and remove the special depreciation from Union's production costs.

Petitioners argue that the Department should continue to include Union Steel's accelerated depreciation costs in its calculation of the company's COP and CV. Petitioners contend the Department does not have an established policy of excluding accelerated depreciation as a cost of production. To support their argument, petitioners state that in recent determination the Department rejected a similar contention made by the respondent and included the company's accelerated depreciation charges in the calculation of COP and CV. *See Final Determination of Sales at Less Than Fair Value; Canned Pineapple Fruit from Thailand* (60 FR 29553, 29560—June 5, 1995). Furthermore, petitioners contend that the cost should be included in COP and CV because it is reported on Union's financial statements that are in accordance with generally accepted accounting principles (''GAAP'') in Korea.

Department's Position

We disagree with the respondent and have included Union's entire special depreciation as a production cost for these final results. Unlike the situation in *Angles,* where the respondent company used special financial accounting treatment to reflect only its regular depreciation (*i.e.,* non-tax depreciation) as a cost in its audited income statements for that year, Union recorded the full special depreciation charge as a cost in its audited income statement in accordance with Korean GAAP. We note that it is the Department's normal practice to use costs recorded in normal books and records of the respondent unless it can be shown that such costs do not reasonably reflect the amounts incurred to produce the subject merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value; Oil Country Tubular Goods from Argentina* (60 FR 33539, 33548—June 28, 1995); *High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review* (59 FR 15897, 15898—March 28, 1995).

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period August 18, 1993, through July 31, 1994:

CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/manufacturer/exporter	Weighted-average margin
Dongbu	6.07 %
Union	1.08 %

The Department shall determine, and the U. S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate for this case will continue to be 14.44 percent, which is the ''all others'' rate in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 58 FR 37176 (July 9, 1993).

Article VI¶5 of the GATT (cited earlier) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations; Certain Steel Products from Korea* (58 FR 37328—July 9, 1993), which is 0.05 percent *ad valorem,* will be subtracted from the cash deposit rate for deposit or bonding purposes.

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: December 29, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–276 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–009]

Color Television Receivers from Taiwan; Notice of Final Scope Ruling Coach Master International Corporation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative scope ruling—antidumping duty order on color television receivers from Taiwan.

SUMMARY: On July 7, 1997, Coach Master International Corporation (CMI) requested that the Department of Commerce (the Department) issue a scope ruling excluding the ''Kitchen Coach Unit'' (KCU) from the scope of the antidumping duty order on color televisions from Taiwan. On August 22, 1997 we initiated a formal scope inquiry pursuant to 19 CFR 353.225 and requested that interested parties submit comments and/or factual information addressing the scope issue. In addition, we requested that interested parties address the criteria for scope determinations which are listed at 19 CFR 351.225(k)(2). We have analyzed the record in this case, including comments of interested parties submitted during this scope inquiry. For the reasons outlined below, we recommend that the Department determine that CMI's KCU is covered by the scope of the antidumping duty order.

Background

In its July 7, 1997 request for a scope ruling, CMI maintains that its Kitchen Coach Unit meets the established criteria for exclusion from the scope of the order covering color television receivers (CTVs) from Taiwan. CMI argues that the primary purpose of the KCU is to provide in-home, learn-while-doing cooking instruction. The KCU is in the category of combination CTV units, which include products that function as of color televisions as well as have characteristics not mentioned in the scope of the order. Many of the features of the KCU have received design and utility patents, which CMI claims distinguish the Kitchen Coach from other combination CTV units already included in the order.

On July 25, 1997, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (AFL–CIO) (the petitioners in this case), submitted comments in support of their contention that the Kitchen Coach Unit falls within the scope of the order. They contend that ''[the product's] surface physical resemblance to a color television receiver is reinforced by its internal componentry (such as its color picture tube, deflection yoke, tuner, and so on) that results in the KCU's ability to receive and display color television broadcast signals.'' The petitioners base their position on the physical characteristics of the KCU and prior cases whereby the Department found combination color televisions to be within the scope of the order. *See Scope Inquiry in Color Television Receivers from Korea, A–580–008, Concerning Gold Star Combination TV/VCR Model KMV–9002, (Gold Star) and Combination TV/Radio Model RCV–0615 (April 5, 1991).*

Analysis

19 CFR 351.225 of the Department's regulations govern scope proceedings. On matters concerning the scope of an order, our primary basis for determining whether a product is covered are the descriptions of the product contained in the petition, the initial investigation, and the International Trade Commission, Treasury, or Department determinations. When these criteria are not dispositive we further consider additional criteria: (1) The physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade, and (5) the manner in which the product is advertised or displayed. *See* 19 CFR 351.225(k)(2). In this case, the descriptions of the product contained in the petition, the investigation and relevant agency determinations are not dispositive of the scope issue. Accordingly, we have analyzed the record with respect to the five additional criteria listed in 19 CFR 353.225(k)(2).

To determine whether this model was within the scope of the order, we reviewed the descriptions of the merchandise in the petition, the ITC determination, and the antidumping duty order.

The petition defined the scope of the investigation as the following:

> The class or kind of merchandise embraced by this petition (''color television receiver'') includes devices which are capable of receiving and processing both broadcast and nonbroadcast electronic signals and converting those signals into a visual and audio practice. This class or kind of merchandise includes all CTVs that (1) have the same or similar general physical characteristics; (2) are considered CTVs in the expectations of ultimate purchasers; (3) move through the same or similar channels of trade; (4) are advertised and displayed in the same or similar manner; and (5) are capable of use as TVs.

(*See* Petition for Relief Under the U.S. Antidumping Law with Respect to Color Television Receivers Imported from Taiwan, May 2, 1983).

The ITC Report states that an industry in the United States is materially injured by reason of imports from Taiwan * * * of color television receivers, provided for an item 685.11 and 685.14 of the Tariff Schedules of the United States (TSUS). Additionally, the report states:

> The imported products subject to these investigations are complete and incomplete color television receivers, including color television receiver kits. Complete receivers are fully assembled and ready to function when purchased by the consumer * * * Also included are projection television receivers. Consumers use these television receivers for watching broadcasts directly off the air or from a cable source. Television receivers may also be used as display units for video games, video tape recorders, or computers.

See ITC Investigation No. 731–TA–134 (Final), *Color Television Receivers from the Republic of Korea and Taiwan,* 49 FR 17824 (April 25, 1984).

Subsequently, the antidumping duty order on color television receivers from Taiwan defined the scope of the investigation as ''color television receivers, complete or incomplete, other than video monitors,'' and stated that it was ''intended to cover all color television receivers regardless of tariff classification except the monitor component of component video systems.'' (*See* Color Television Receivers, Other than Video Monitors, from Taiwan, 49 FR 18337 (April 30, 1984). Following this order was the Gold Star scope decision in which the Department determined that combination color televisions were within the scope of the order. *See Scope Inquiry in Color Television Receivers from Korea, A–580–008, Concerning Gold Star Combination TV/VCR Model KMV–9002, (Gold Star) and Combination TV/Radio Model RCV–0615 (April 5, 1991).*

A plain reading of the petition, ITC determination and the order demonstrates that combination units, such as the KCU, were neither specifically included in, nor excluded from these prior scope descriptions. (*See* Color Television Receivers, Except for Video Monitors, from Taiwan, 51 FR 46895, concluding prior descriptions are ambiguous with respect to combination units and that Diversified Products analysis is warranted.) Because these prior scope descriptions are ambiguous as to whether a unit consisting of several items, including a television, is covered by the scope of the order, we applied the five criteria for making scope determinations, which are set forth in our regulations at 19 CFR 353.252(k)(2).

Documents and parts thereof from the underlying investigation deemed relevant by the Department to the scope of the outstanding order were made part of the record of this determination and are referenced herein.

Physical Characteristics

CMI argues that KCU has many specific features and design patents that distinguish it from other color television receivers from Taiwan. According to CMI, the product includes an instructional CD component, 9″ color television tuner and screen, stereo sound, and dual processors. The unit is controlled by a patented multi-directional waterproof, kitchen-proof remote control. The consumer package consists of six interactive CDs, recipe card set, cooking index, and hardware unit. The major components of the hardware unit include: data storage device, integrated unit (or module), and a remote control. The integrated unit includes a television set with a screen and a video compact disc player, both housed in the same cabinet. (*See* CMI's submission of Sept. 10, 1997, at 12.) CMI emphasizes that, although ''the product includes a functioning television receiver, it was conceived of, and designed, specifically for the learn-while-doing application, specifically in the kitchen.'' The product literature provided by CMI describes the Kitchen Coach Unit as a unique integration of a ''micro-processor'' (a dedicated computer with embedded software), video CD player, and high quality television. CMI argues that the multiple patents employed in the KCU, including the ''embedded menuing system, single finger operation, auto pause functionality, and multi-directional remote control,'' distinguish it from other combination CTVs. (*See* Exhibit B–1 to CMI's submission of Sept. 10, 1997)

Petitioners argue that the KCU has the physical characteristics of a color television, notably the ability to receive and process video and audio presentation. Petitioners note that ''the KCU's features and components are prominently those of a color television receiver such that the KCU receives and displays on its screen color television broadcast signals.'' The petitioners also note that in the promotional brochure the KCU is described as ''three great products in one—(1) a top of the line, 128 cable-channel color TV (with 69 broadcast channels); (2) a high quality stereo audio CD player; and most importantly (3) a video CD player with interactive software providing your own personal cooking coach.'' (*See* petitioners' comments of September 26, 1997 at 3, citing Exhibit B–2 of CMI's July 2, 1997 submission.)

The Department determines that the KCU possesses the primary physical characteristics of a color television receiver as defined in the antidumping duty order on color television receivers from Taiwan. Specifically, the KCU has the design features and physical characteristics ''for receiving a broadcast signal and reproducing it in video and audio form.'' *See Color Television Receivers, Except for Video Monitors, from Taiwan,* 51 FR 46,895, 406,902 (Dec. 29, 1986). The fact that the KCU has several proprietary patents does not render the unit incapable of performing as a color television receiver. Because KCU has the physical characteristics to receive and process both broadcast and non-broadcast electronic signals, and convert those signals into a visual and audio presentation, we conclude that the KCU possesses the physical characteristics of a color television receiver.

Ultimate Use

CMI claims that the disc mode operation of the KCU renders the product different from other CTV combination units. Stored on the preferred video compact disc is an introductory message which describes the operation and capabilities of the unit. The system has the ability to display retrieved information from the disc either statically on the screen of the integrated unit, or as video with audible reception. CMI asserts that this feature, combined with the consumer package containing six interactive CDs, recipe card set, cooking index, hardware unit, and remote control, suggest that the ultimate use of the product is primarily for cooking instruction, not simply viewing television.

Petitioners argue that CMI could have achieved its professed goals with a video monitor alone. It opted instead for a color television receiver because a video monitor is incapable of receiving and displaying color television broadcast signals. As in the Gold Star determination, the combination features of the KCU do not substantially alter the in-scope function of the product. Similar to Gold Star's CTV/VCR combination unit, the KCU's CTV can be used without the video compact disc (VCD) component, whereas the VCD component cannot be used without the CTV. Accordingly, the petitioners conclude, ''the CD facility distinguishes the KCU from a CTV that does not have a combination CD, just as a VCR facility distinguishes a CTV/VCR combination unit from a CTV that does not have a combination VCR, but this facility is subsidiary to the KCU functioning as a color television receiver.'' (*See* petitioners' comments of July 25, 1997 at 5.) We agree with petitioners. The fact that the KCU may be used for cooking instruction purposes in addition to clearly in-scope purposes does not remove the KCU from the broader class of TVs. Because the KCU is capable of operating as a television while not in operation as a VCD, we determine that the ultimate use of the KCU is as a television receiver.

Channels of Trade

CMI claims that the KCU travels in channels of trade different from those typical of consumer electronics. (*See* respondent's declaration of September 9, 1997 at 16). They note that the KCU is marketed to potential retailers through housewares and food trade shows, and is sold primarily in kitchen stores, and housewares departments. Respondent also states that CMI markets and sells the KCU in locations where other kitchen appliances, kitchen equipment and food are sold. Specifically, the KCU is sold in ''upscale specialty kitchen stores (Home Place, Dorothy Lane Markets, and Sur la Table) and housewares departments of department stores: Bon Marche Housewares, Macy's Cellar (a department of the store devoted primarily to cooking); and Marshall Field's Housewares department.'' (*See* respondent's submission of September 9, 1997 at 24).

Petitioners claim that because the KCU is a consumer electronics product, it could be marketed in the same channels of trade as other combination CTV units. The fact that it is sold in the housewares department of retail stores, as opposed to the consumer electronics department, does not sufficiently establish a separate channel of trade. Petitioners argue that CMI's statement that ''* * * the product is not typically sold at retail alongside televisions'' (*See* respondent's submission of September 9, 1997 at 23) implies that it is, on occasion, sold alongside televisions; and thus should be considered to move in the same channels of trade. (*See* petitioners' comments of September 26, 1997 at 12).

The Department notes that although many of the components of the KCU are designed for instructional purposes, it is functionally a consumer electronics product. In prior scope determinations, where combination CTV/VCR and CTV/radio combination units were classified as consumer electronics goods, we considered them to travel in the same channels of trade as other color television receivers. (*See* Goldstar at 20). In this case however, the record indicates that the KCU is marketed through different channels of trade than most in-scope products. Respondent claims that the KCU is not typically sold in the same kinds of retail outlets as are televisions, and petitioner does not provide sufficient information contradicting this claim. (*See* respondent's submission of September 9, 1997 at 24). If the Department accepts KCU's contention that the noted consumers represent a different channel of trade from consumer electronics, then the KCU travels in different channels of trade than other products subject to the order.

Expectations of Ultimate User

CMI contends that the primary purpose of the KCU is to provide in-home, learn-while-doing cooking instruction. While acknowledging that the product is portrayed as a television with added features, CMI contends that it is the additional components (such as the ''kitchen proof'' remote control, interactive compact discs, recipe card set, and cooking index) that prompt consumers to purchase the KCU rather than other television receivers. CMI therefore argues that the purchasers expect the KCU to offer cooking techniques, and that this additional feature distinguishes the KCU from color televisions included in the scope of the order.

Petitioners cite CMI's promotional brochure, which advertises the KCU as a product that allows purchasers to, ''jump back and forth instantly between TV and the coach learning mode * * * It's so flexible and easy that you can prepare gourmet dishes just during the commercials of your favorite TV program.'' Specifically, petitioners note that the KCU ''will function as a top of the line, 128 cable-channel color TV (with 69 more broadcast channels).'' (*See* petitioners' comments of July 25, 1997 at 5).

Because the promotional literature emphasizes the KCU's ability to receive television signals, the Department determines that the ultimate purchaser would expect the product to function as a color TV in addition to functioning as a cooking instruction device. The fact that the ultimate purchaser would expect the KCU to function as a television supports the position that the product be considered in-scope. Additionally, it is evident from the literature that the KCU/CVD function could be used independently of the TV. As determined in the Gold Star decision, ''the radio is no more than an added feature which does not detract from the unit's primary use as a television receiver.'' *See Scope Inquiry in Color Television Receivers from Korea, A–580–008, Concerning Gold Star Combination TV/VCR Model KMV–9002, and Combination TV/Radio Model RCV–0615* at 17. In this case, we conclude that the CVD is an added feature which does not remove the KCU from within the scope of the order.

Manner in Which Product Is Advertised

CMI contends that the KCU is marketed primarily to aspiring chefs as an interactive, combination TV/CD unit, for cooking instruction. CMI notes that the product offers ''convenient features for kitchen use, including a kitchen-proof remote control.'' However, CMI also acknowledges that the KCU functions as a television. The literature states that the KCU is actually, ''Three great products in one—(1) a top of the line, 128 cable-channel color TV (with 69 more broadcast channels); (2) a high quality stereo audio CD player; and most importantly (3) a video CD player with interactive software providing your own personal cooking coach.'' (*See* petitioner's comments of September 26, 1997 at 11, citing Exhibit B–2 of CMI's July 2, 1997 submission). It is advertised as a mini entertainment center for the kitchen.

The promotional literature and descriptive video identify the KCU as a color television that allows the viewer to ''switch instantly from the 'coach' mode to a favorite TV program.'' (*See* Exhibit B–2 of CMI's July 2, 1997 submission). The literature also defines the product as an integration of a micro-processor, video CD player, and higher quality television. In emphasizing its simplicity, the literature states that the user can ''prepare gourmet dishes just during the commercials of your TV program.'' (*See* Exhibit B–1 of CMI's July 2, 1997 submission).

The Department recognizes KCU's dual use as both a tool for cooking instruction and as a television receiver. It is the function of the latter that precludes the KCU from exemption in this scope proceeding. Since the KCU is capable of functioning as a television receiver without functioning as a cooking aid, and since it is clearly advertised as a television, we determine that the product is, for scope purposes, a color television subject to the antidumping duty order on color television receivers from Taiwan.

Conclusion

KCU's CTV/CD combination unit is similar to other combination units previously classified by the Department as color television receivers, notably the combination CTV/VCR model KMV–9002 made by Gold Star which the Department determined is within the scope of the antidumping duty order on color television receivers from Korea. Fundamental to the Department's analysis is the ''in-scope'' function of the KCU. Since it is capable of receiving and processing broadcast and non-broadcast signals, it is properly classified as a CTV. This criteria is consistent with that employed in Gold Star. Moreover, the Department has reaffirmed in prior scope determinations that various CTV combination units fall within the scope of the Taiwanese order.[1] Our analysis of the physical

[1] *See Color Television Receivers, Except for Video Monitors, from Taiwan,* 51 FR 46,895 (Dec. 29, 1986) in which the Department found Shin-Shirasuna's Model EEE combination portable CTV/radio, Emerson's AVC 13 CTV/stereo/radio/cassette player/recorder/digital clock, Emerson's TC7 CTV/radio/electronic digital clock, and Emerson's PC5 Portable CTV/radio with built-in battery recharger circuit to be within the scope of the order because ''the fact that the unit is in combination with

Continued

characteristics of the product and prior scope determinations on combination units strongly supports the conclusion that the KCU is within the scope of the order.

The physical characteristics of CMI's Kitchen Coach Unit are predominantly those of a color television receiver. The KCU is referred to as a color television in both the promotional literature and CMI's submittal of September 10, 1997. As in the case of Gold Star Combination TV/VCR and TV/Radio units from Korea, it can be used solely as a television, while its other function—the compact disk portion—cannot be used without the television portion of this combination unit. Thus, the ultimate purchasers of the KCU would expect it to function as a color television. Furthermore, the fact that the KCU includes other features does not necessarily remove it from the color television category. Although we recognize that the KCU may be marketed through different channels of trade, the totality of our findings yields substantial record evidence in support of our conclusion.

Recommendation

For the above reasons, we recommend that the KCU be included within the scope of the order on color television receivers from Taiwan.

Dated: December 22, 1997.

Richard Weible,

Acting Deputy Assistant Secretary, Group III.

[FR Doc. 98–281 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–M

another feature does not alter its primary function.'' See also, *Funai Electric Company, Ltd.* v. *United States* 713 F. Supp. 422 (CIT 1989) whereby the Court decided that ''[i]n physical terms the television portion of the importation is prominent.''

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822 & A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Extension of Time Limits for Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for antidumping duty administrative reviews of certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada.

SUMMARY: The Department of Commerce (''the Department'') extending the time limits for the final results of the third antidumping duty administrative reviews of the antidumping orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover five manufacturers and exporters of the subject merchandise during the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski (Dofasco, Inc. and Sorevco Inc.); Carrie Blozy (Continuous Colour Coat); Eric Johnson (Algoma Inc); Doreen Chen (Gerdeau MRM Steel); N. Gerard Zapiain (Stelco, Inc.); Import Administration. International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION: The Department published the preliminary results of these administrative reviews in the **Federal Register** on September 9, 1997 (62 FR 47429). Because it is not practicable to complete these reviews by the current deadline of January 7, 1998, the Department is extending the time limits for the final results of the aforementioned reviews 60 days, to March 9, 1998, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended by the Uruguay Round Agreements Act of 1994. *See* memorandum from Joseph A. Spetrini to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 24, 1997

Joseph A Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 98–279 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–MC

DEPARTMENT OF COMMERCE

International Trade Administration

Research Foundation of CUNY; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–087. *Applicant:* Research Foundation of CUNY, New York, NY 10003. *Instrument:* Stopped-Flow Rapid Kinetics Accessory, Model SFA–20. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 62 FR 53594, October 15, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. It provides both UV/visible and fluorescence detection of reaction kinetics that can be rapidly deployed with a wide variety of spectrometers using a plug-in umbilical. This capability is pertinent to the applicant's intended purposes and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–273 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Cornell University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–080. *Applicant:* Cornell University, Ithaca, NY 14853. *Instrument:* Rapid Mixing Accessory, Model SFA–20/Spex. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 62 FR 52685, October 9, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National

Institutes of Health advises in its memorandum dated November 5, 1997, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–272 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–096. *Applicant:* Princeton University, Purchasing, P.O. 33, Armory Building, 110 Washington Road, Princeton, NJ 08544–0033. *Instrument:* Crystal Growth Furnace, Model FZ–T–10000–HVP–II–P. *Manufacturer:* Crystal Systems Inc., Japan. Intended Use: The instrument will be used to study the detailed properties of transition metal oxides which undergo metal insulator and magnetic transitions at both the charge transfer and Mott-Hubbard regimes. Spin ladder compounds, another important topic of current research in Materials Physics, will also be investigated through the use of single crystals grown in the floating zone apparatus. *Application accepted by Commissioner of Customs:* November 13, 1997.

Docket Number: 97–097. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695. *Instrument:* Sample Cartridges for Photoelectron Emission Microscope. *Manufacturer:* Elmitec, Germany. *Intended Use:* The instrument is part of an existing photoelectron emission microscope system that will be used to mount and process samples. Specifically, it will allow mounting the sample to the sample manipulator, to a sample, transfer rod, and a sample manipulator in an MBE processing system. *Application accepted by Commissioner of Customs:* December 5, 1997.

Docket Number: 97–098. *Applicant:* University of Vermont, Department of Medicine, Given Building, Burlington, VT 05405. *Instrument:* Special Laboratory Glass. *Manufacturer:* Louwers Hapert Glasstechnics BV, The Netherlands. *Intended Use:* The instrument will be used to assemble tubes which are used in the reduction of water to hydrogen by the zinc reduction method. In this case, the hydrogen released by this method will be analyzed by mass spectrometry to determine the amount of deuterium in each sample. *Application accepted by Commissioner of Customs:* December 4, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–274 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Stainless Steel Wire Rod From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill, Kathleen Lockard, or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain stainless steel wire rod from Italy: Cogne Accai Speciali S.r.l. (CAS), Acciaierie Valbruna S.r.l. (Valbruna) and Acciaierie di Bolzano S.p.A. (Bolzano). For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by AL Tech Specialty Steel Corp.; Carpenter Technology Corp.; Republic Engineered Steels; Talley Metals Technology, Inc.; and, United Steelworkers of America, AFL–CIO/CLC (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register**, the following events have occurred. *See Notice of Initiation of Countervailing Duty Investigation: Certain Stainless Steel Wire Rod (''SSWR'') from Italy*, 62 FR 45229 (August 26, 1997) (*Initiation Notice*). On September 9, 1997, we issued countervailing duty questionnaires to the Government of Italy (GOI), the European Commission (EC), and the producers/exporters of the subject merchandise. On October 1, 1997, we postponed the preliminary determination of this investigation until December 29, 1997 (62 FR 52085, October 6, 1997).

On October 2, 1997, we met with representatives of the GOI and the EC, pursuant to Article 13 of the Agreement on Subsidies and Countervailing Measures (SCM) . We received responses to our initial questionnaires from the GOI, the EC, Valbruna/ Bolzano, and CAS between October 27 and November 4, 1997. Between November 10 and December 3, we issued several supplemental questionnaires to the parties. We received responses to these supplemental questionnaires between November 24 and December 11, 1997. CAS also submitted additional information on its calculation of the average useful life of assets on December 16, 1997.

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rod (SSWR or subject merchandise) comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/

or descaling, and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades SF20T and K-M35FL are excluded from the scope of the investigation. The percentages of chemical makeup for the excluded grades are as follows:

SF20T

Carbon—0.05 max
Manganese—2.00 max
Phosphorous—0.05 max
Sulfur—0.15 max
Silicon—1.00 max
Chromium—19.00/21.00
Molybdenum—1.50/2.50
Lead added (0.10/0.30)
Tellurium added (0.03 min)

K–M35FL

Carbon—0.015 max
Silicon—0.70/1.00
Manganese—0.40 max
Phosphorous—0.04 max
Sulfur—0.03 max
Nickel—0.30 max
Chromium—12.50/14.00
Lead—0.10/0.30
Aluminum—0.20/0.35

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the ''Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Injury Test

Because Italy is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On September 24, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (62 FR 49994).

Alignment with Final Antidumping Duty Determination

On September 10, 1997, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations. In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final antidumping duty determinations in the antidumping investigations of certain stainless steel wire rod. *See Initiation of Antidumping Investigations: Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 45224 (August 26, 1997).

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1996.

Facts Available

Section 776(a)(1) of the Act requires the Department to use facts available if ''necessary information is not available on the record.'' In three instances, information necessary to our analysis of CAS was unavailable on the record; therefore, we have resorted to facts available as discussed in the ''Change in Ownership'' and ''Allocation Period'' sections below.

Company Histories

The GOI identified three producers of subject merchandise that exported the subject merchandise to the United States during the POI: CAS, Valbruna, and Bolzano.

CAS

In the past fifteen years, CAS has undergone several changes in organization, name, and ownership. From 1982 to 1984, the facilities in Aosta, where the subject merchandise is produced, were part of Nuova Sias S.p.A., which was, in turn, wholly-owned by the GOI. From 1984 to 1987, the Aosta facilities operated under Deltasider S.p.A., a wholly-owned subsidiary of steel producer Finsider S.p.A. Finsider S.p.A. was, in turn, wholly-owned by the Istituto per la Ricostruzione Industriale (IRI) of the GOI. In 1987, the Aosta operations were transferred to Delta Cogne S.p.A., a newly-created, wholly-owned subsidiary of Deltasider S.p.A. In 1988, IRI began the liquidation of Finsider and its subsidiaries.

In 1988, IRI created ILVA S.p.A. as the successor to Finsider; ILVA was also wholly-owned by IRI and the GOI. In 1989, the Aosta operations were transferred to ILVA. In December 1989, Cogne S.r.l. was created as a wholly-owned subsidiary of ILVA S.p.A., which held the Aosta operations. Cogne S.r.l. was later named Cogne Acciai Speciali S.p.A. (Cogne S.p.A.). From 1990 to 1992, Gruppo Falck S.p.A. (Falck), a private company with holdings in steel and real estate, held 22.4 percent of Cogne S.p.A.''s stock (with the remainder and controlling interest held by ILVA). Falck acquired the shares of Cogne S.p.A. by exchanging shares of its own subsidiary, Bolzano. By the end of 1992, Falck's interest in Cogne S.p.A. was dissolved, and Cogne S.p.A. again was wholly-owned by ILVA. Based on the information we have about the swap, we understand that neither the initial swap nor the dissolution involved any cash transactions.

In 1991, Robles S.r.l. acquired the land and buildings, *e.g.* the non-productive assets, of the Aosta facilities from Cogne S.p.A. Robles S.r.l. was acquired by Compagnie Monegasque de Banque S.A. at the end of 1991. In 1992, Cogne S.p.A. acquired the shares of Robles S.r.l., which became Cogne S.p.A.''s wholly-owned subsidiary. The name of Robles S.r.l. was changed to Cogne Acciai Speciali, S.r.l. (CAS), later that year.

In 1993, ILVA prepared to liquidate or privatize all of its subsidiaries, divisions, and productive units, including Cogne S.p.A. In preparation for the privatization, Cogne S.p.A. transferred nearly all of the assets of the Cogne companies to CAS and assumed nearly all of the liabilities. Concurrently, Cogne S.p.A.''s wholly-owned subsidiary, CAS, was offered for sale in a bidding process. The sale was advertised and open to any outside party. Three parties submitted complete bids for CAS. GE. VAL. S.r.l.''s bid was accepted by Cogne S.p.A. The CAS shares were transferred based on an initial cash payment in 1993, and an additional payment in 1995. The transfer of shares also required additional cash payments if CAS turned profits through 1998. Cogne S.p.A. was later folded into ILVA, which was liquidated, in part, and merged, in part, into IRITECNA, another IRI company. In 1995, as the result of a merger, GE. VAL. S.r.l. became MEG S.A. (MEG). CAS has been wholly-owned by MEG since that time.

Bolzano and Valbruna

From 1985 until 1990, Bolzano, a producer of the subject merchandise, was a wholly-owned subsidiary of Acciaierie e Ferriere Lombarde Falck, the main industrial company of Falck. In 1990, ILVA acquired 44.8 percent of the stock in Bolzano. ILVA acquired the shares of Bolzano by exchanging shares of its own subsidiary, Cogne S.p.A. ILVA also acquired shares in other Gruppo Falck steel companies. In 1993, ILVA's interest in Bolzano was dissolved, and Falck again held virtually all of the stock in Bolzano. Falck decided to sell Bolzano based on its company-wide strategic decision to withdraw from the steel industry. Falck contacted Valbruna, as a potential buyer, in late 1994. Subsequently, the parties entered into negotiations for the transfer of Bolzano. Falck and Valbruna are both private parties. Each had a valuation of Bolzano done by an independent international auditing firm. The valuation studies disagreed, so a third study was commissioned by the two parties to determine the net equity and cash flow of Bolzano for purposes of finalizing the purchase price. Since August 31, 1995, Bolzano has been 99.99 percent-owned by Valbruna, and since January 1, 1996, the two companies's financial statements have been consolidated.

Affiliated Parties

In the present investigation, there are affiliated parties (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 30287 (June 14, 1996) (*Pasta*). As Valbruna owns and controls Bolzano, the companies prepare consolidated financial statements, and both produce the subject merchandise, we preliminarily determine that it is appropriate to treat the two SSWR producers as a single company. We calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their consolidated total sales, or consolidated export sales, as appropriate.

Change in Ownership

In the 1993 investigations of Certain Steel Products, we developed a methodology with respect to the treatment of non-recurring subsidies received prior to the sale of a company. *See, Final Countervailing Duty Determination; Certain Steel Products from Austria, et. al.*, 58 FR 37217 (July 9, 1993) (*Certain Steel from Austria*). This methodology was set forth in the *General Issues Appendix (GIA*), appended to *Certain Steel from Austria.* The methodology was subsequently upheld by the Federal Circuit. *See Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996); *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. 1997). Under the *GIA* methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. To make this estimate, we divide the face value of the company's subsidies by the company's net worth for each of the years corresponding to the company's allocation period. We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, *i.e.*, net worth, of the company. Next, we multiply this average ratio by the purchase price of the company to derive the portion of the purchase price that we estimate to be a repayment of prior subsidies. Then, the benefit streams of the prior subsidies are reduced by the ratio of the repayment amount to the net present value of all remaining benefits at the time of the change in ownership.

In the URAA, Congress clarified how the Department should approach changes in ownership. Section 771(5)(F) of the Act states that:

> A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administrating authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

The Statement of Administrative Action accompanying the URAA, reprinted in H.R. Doc. No. 103–316 (1994) (SAA) explains why Section 771(5)(F) was added to the statute. The SAA at page 928 states:

> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct such an extreme interpretation.

Consistent with the URAA and the SAA, the Department continues to examine whether non-recurring subsidies benefit a company's production after a change in ownership, even one accomplished at arm's length. Accordingly, we continue to follow the methodology developed in the *GIA* based on our determination that this methodology does not conflict with the change in ownership provision of the URAA. As stated by the Department, ''[t]he URAA is not inconsistent with and does not overturn the Department's General Issues Appendix Methodology * * * .'' *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377, 58379 (November 14, 1996) (*UK Lead Bar 94*). We further clarified in *UK Lead Bar 94* that, ''[t]he language of Sec. 771(5)(F) of the Act purposely leaves discretion to the Department with regard to the impact of a change in ownership on the countervailability of past subsidies.'' *Id.* at 58379. The Department has been applying the methodology set forth in the *GIA*. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago*, 62 FR 55003 (October 22, 1997) (*Trinidad and Tobago*) and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada*, 62 FR 54972 (October 22, 1997) (*Steel Wire Rod from Canada*). None of the facts in this case indicate that the application of the *GIA* methodology is inappropriate; therefore, we are applying the *GIA* methodology to analyze the changes in ownership of respondent companies, CAS and Bolzano.

CAS

To calculate the amount of the previously bestowed subsidies that passed through to CAS, we followed the *GIA* methodology described above. We were unable to calculate the subsidies-to-net worth ratios used in the privatization calculation for 1985 and 1986 because the net worth information was not available on the record. Therefore, in accordance with section 776 of the Act, as facts available, we used an average of the years available (1987 through 1992) in the privatization calculation. As described in the ''Company Histories'' section above, ILVA ceased operations following the privatization and/or liquidation of all of its subsidiaries, operating units, and divisions. For untied non-recurring subsidies provided to ILVA (and prior to 1989, ILVA's predecessor, Finsider), Cogne's former parent company, we calculated the amount of these untied subsidies attributable to Cogne by applying a ratio of Cogne's assets to its parent company's assets in the year of receipt of the subsidy. For the untied subsidies provided to Finsider in 1985 and 1986, we were unable to use an asset ratio in the year of receipt because we did not have all of the information necessary. Therefore, in accordance with section 776 of the Act, as facts available, we used a ratio of Delta Cogne's assets to Finsider's assets in 1987, the closest year to the year of receipt of the untied subsidies for which we have the information. We plan to obtain information on assets for the relevant years for our final determination. When calculating the subsidies to net worth ratios used in the privatization methodology described above, we included Cogne's share of the untied subsidies in the calculation.

As discussed in the ''Company Histories'' section above, from 1990–1993, ILVA held a minority interest in Bolzano and Falck held a minority interest in Cogne. However, as examined previously by the Department, the exchange of shares involved no cash transactions. *See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* 58 FR 37327 (July 9, 1993) (*Certain Steel from Italy*). In addition, neither Falck nor ILVA acquired a controlling interest in the other's subsidiary. The companies were not consolidated, and the interest of ILVA and Falck in each other's subsidiary was relinquished without financial obligation (*see Certain Steel from Italy*). Based on the record information about the structure of the share exchange, we understand the swap involved no financial transfers other than the actual shares during acquisition or dissolution. Therefore, we do not consider it to constitute a legitimate sale which could give rise to the repayment or redistribution of subsidies. *See, e.g., GIA,* 58 FR at 37266. For the purpose of this preliminary determination, we have not attributed any portion of (1) ILVA's untied subsidies to Bolzano or (2) Falck's untied subsidies to CAS.

Bolzano

To calculate the amount of the previously bestowed subsidies that passed through to Bolzano from Falck, we followed the *GIA* methodology which the Department has previously determined is applicable to private-to-private changes in ownership to examine the reallocation of subsidies. *See, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review,* 62 FR 53306 (October 14, 1997) (*UK Lead Bar 95*). When Falck sold Bolzano to Valbruna in 1995, it was in the process of transferring or closing all of its steel operations. For untied non-recurring subsidies provided to Falck in the years prior to Bolzano's sale to Valbruna, we calculated the amount of these untied subsidies attributable to Bolzano by applying a ratio of Bolzano's assets to Falck's assets in the year of receipt of the subsidy. When calculating the subsidy to net worth ratios used in the methodology described above, we included Bolzano's share of the untied subsidies in the calculation. Also as described above, we have not attributed any portion of ILVA's untied subsidies to Bolzano during the period ILVA held a minority interest in Bolzano.

Subsidies Valuation Information

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See GIA,* 58 FR at 37227. However, in *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). Thus, we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16551 (April 7, 1997).

In this investigation, the Department has followed the Court's decision in *British Steel,* and examined information submitted by the respondent companies as to their average useful life of assets.

Valbruna/Bolzano: As discussed in the ''Affiliated Parties'' section of this notice, we have preliminarily determined that the relationship between Valbruna and Bolzano warrants treatment as a single company. Therefore, we calculated a single weighted-average AUL for Valbruna and Bolzano. Based on the information submitted by the firms on the average useful life of their non-renewable physical assets, we preliminarily determine that the AUL for Valbruna/Bolzano is 12 years.

CAS: When we evaluated the information initially submitted by CAS regarding its non-renewable physical assets, we found that the AUL calculation included figures which could not be explained by the company's submitted financial information. It appeared that the AUL calculated by CAS was distorted by the asset valuation methodology employed by the company in 1989 and 1993. In addition, it appeared that CAS's calculated depreciation for 1994 through 1996 reflected the remaining useful life of assets instead of the actual useful life of assets, which could have resulted in further distortions. We provided CAS with a detailed list of questions to ascertain and clarify the source of the discrepancies. On December 16, 1997, CAS submitted additional information on its AUL. Based on our examination of this information and the other information on the record, we concluded that the company's asset valuation methodology in 1989 and use of accelerated depreciation from 1994 through 1996 results in a calculation that does not reflect a reasonable estimate of the average useful life of non-renewable physical assets. Accordingly, based on the information available, we conclude that CAS's reported AUL cannot be used for purposes of allocating non-recurring subsidies over time.

We then examined the GOI's tax depreciation schedule for the steel sector in Italy to determine whether it reflected average useful life of the Italian steel companies and, therefore, could be used as a basis for CAS's allocation period. According to the GOI, the depreciation schedule was based on information acquired from an industry survey conducted in 1988. The depreciation schedule had a 17.5 percent depreciation rate for heavy machinery and automated equipment in the steel industry, which would result in an AUL of approximately 6 years. We asked the GOI to provide the survey and calculations used to determine these rates, but the GOI was unable to provide the survey in time for this preliminary determination. Therefore, we could not examine the information contained in the survey to determine whether the depreciation schedule could serve as a reasonable surrogate for CAS's allocation period. We plan to examine this study further to determine if it reflects the average useful life of assets for the steel industry in Italy, and may be used as a surrogate for CAS's AUL for the final determination. However, for purposes of this preliminary determination, we do not consider it appropriate to use the tax depreciation schedule of approximately six years as the allocation period, when the AUL for another producer of the subject merchandise is 12 years. Because there are only a few producers of the subject merchandise in Italy, we find that the AUL calculated by Valbruna/Bolzano is more appropriately representative of the SSWR industry. Therefore, as facts available under section 776 of the Act, we preliminarily determine that using Valbruna/Bolzano's allocation period of 12 years is appropriate as the allocation period of non-recurring subsidies. *See* Memorandum to the File Regarding CAS's AUL Calculation, dated December 29, 1997, on file in the Central Records Unit of the Department of Commerce, Room B–099 (CRU).

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion, based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;
2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;
3. Rates of return on equity in the three years prior to the government equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in the marketplace for the product under consideration.

For a more detailed discussion of the Department's equityworthiness criteria, see the *GIA,* 58 FR at 37244.

The Department initiated an investigation of ILVA's equityworthiness for the periods 1982 through 1988, and 1991 through 1993.[1] ILVA has previously been found to be unequityworthy from 1985 through 1988 and from 1991 through 1992 (*see Initiation Notice Certain Steel from Italy* and *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy,* 59 FR 18357 (April 18, 1994) (*Electrical Steel*)). No new information has been provided in this investigation that would cause us to reconsider these determinations.

Equity Methodology

In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists, *i.e.,* the price of publicly traded shares of the company's stock or an infusion by a private investor at the time of the government's infusion (the latter may not always constitute a proper benchmark based on the specific circumstances in a particular case).

In this investigation, a market benchmark does not exist. Therefore, the Department is following the methodology described in the *GIA,* 58 FR at 37239. *See also Trinidad and Tobago,* 62 FR at 55004. Following this methodology, equity infusions made on terms inconsistent with the usual practice of a private investor are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

As stated in our *Notice of Initiation* (62 FR 45529), we initiated an investigation of ILVA's creditworthiness from 1982 through 1994, CAS's creditworthiness from 1994 through 1996, Falck's creditworthiness from 1992 through 1994, and Bolzano's creditworthiness from 1995 through 1996, to the extent that government equity infusions, long-term loans, or loan guarantees were provided in those years.[2]

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, see, *e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France*); and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom,* 58 FR 37393 (July 9, 1993).

CAS

ILVA, CAS's former parent company was determined to be uncreditworthy from 1985 through 1992 in *Electrical Steel.* No new information has been presented in this investigation that would lead us to reconsider this finding. Therefore, we continue to find ILVA uncreditworthy from 1985 through 1992. In order to determine whether ILVA was uncreditworthy in 1993, in accordance with the Department's past practice, we examined financial data for the prior three years. *See, e.g., Certain Steel from France,* 58 FR at 37306. In the years relevant to this finding, ILVA consistently had negative operating profits, poor cash flow, and difficulty in meeting its short-term liabilities as indicated by its financial ratios. *See*

[1] As discussed in the "Allocation Period" section of this notice, the Department has determined the appropriate allocation period for non-recurring subsidies received by CAS to be 12 years. Therefore, we are not examining ILVA's equityworthiness prior to 1985.

In *Electrical Steel,* we treated equity infusions given to ILVA in 1991 and 1992 as interest free loans because they were provisional until approved by the EC (the approval was granted in 1993). In this investigation, we determined that the benefit streams from these equity infusions begin in the years they were received, thus, we examined ILVA's equityworthiness in 1991 and 1992; we have not examined ILVA's equityworthiness in 1993.

[2] As discussed in the "Allocation Period" section of this notice, the Department has determined the appropriate allocation period for non-recurring subsidies received by CAS and Valbruna/Bolzano to be 12 years. Therefore, we have not examined the creditworthiness of any company prior to 1985. In addition, because CAS was privatized on December 31, 1993, we have not examined ILVA's creditworthiness in 1994.

''Creditworthiness Memorandum,'' dated December 29, 1997, on file in the CRU (Creditworthiness Memo).

CAS did not receive equity infusions, grants, long-term loans, or loan guarantees in 1994 and 1995. Therefore, we are not examining CAS's creditworthiness in those years. To determine CAS's creditworthiness in 1996, in accordance with the Department's practice, we analyzed financial data for the prior three years provided by CAS. As a result of the debt forgiveness associated with the company's privatization in 1993, the company's poor financial condition improved significantly over the next two years. Although CAS incurred large losses in 1993, the company was profitable in 1994 and 1995 and its financial ratios in those years were at acceptable levels. Therefore, we preliminarily determine CAS to be creditworthy in 1996. *See* Creditworthiness Memo.

Bolzano

Falck, Bolzano's former parent company, did not receive equity infusions, long-term loans or loan guarantees from 1992 through 1994. Bolzano did not receive equity infusions, loans or loan guarantees in 1995 or 1996. Therefore, we are not examining either Falck's or Bolzano's creditworthiness in this investigation. *See* Creditworthiness Memo.

Discount Rates

We used as the discount rate the average long-term loan rate available in Italy, based upon a survey of 114 Italian banks reported by the Banca D'Italia, the central bank of Italy, since the GOI does not maintain information on the national average long-term fixed interest rate or the highest long-term fixed interest rate commonly available to firms. *See Electrical Steel.* For any year in which a company was uncreditworthy, we calculated the discount rates for uncreditworthy firms following the methodology described in the *GIA*. Specifically, we added to the long-term loan rate available in Italy a risk premium of 12 percent of the Italian Bankers Association (ABI) prime rate.

I. Programs Preliminarily Determined To Be Countervailable

Programs of the Government of Italy

A. Benefits Associated with Finsider-to-ILVA Restructuring

As discussed in the ''Company Histories'' section above, in 1988, Finsider was liquidated, and its assets (and those of its subsidiaries such as Delta Cogne) were transferred to the new steel holding/operating company, ILVA S.p.A. This liquidation and asset transfer was examined in *Certain Steel from Italy* and *Electrical Steel,* and found to provide countervailable benefits to the production of the merchandise subject to those investigations. Because of the complexity of the reorganization examined in *Electrical Steel,* the Department focused on the benefits specifically provided to the ILVA specialty steels division, formerly known as Terni Accai Speciali (TAS), the producer of subject merchandise in that investigation. In *Electrical Steel,* the Department found that the reorganization transferred TAS's productive assets to ILVA while a significant portion of the liabilities and losses were left in TAS and were later assumed by IRI. Because both ILVA and Finsider were wholly-owned by IRI, which was owned by the GOI, the Department found that the transfer of assets, but not liabilities, between the companies provided a countervailable benefit to the specialty steels division of ILVA, and the subject merchandise, in *Electrical Steel.*

In this investigation, we have a similar situation, which is further complicated by the subsequent liquidation of ILVA. In order to determine the countervailable benefit from the 1988/1989 restructuring, the Department would normally focus on the liabilities left in the shell company. However, there were significant changes in the liabilities and assets for Delta Cogne (the Finsider subsidiary that was liquidated) and Cogne S.r.l. (the ILVA subsidiary that was created in 1989 and received the assets of Delta Cogne) between the two years. We have been unable to obtain a clear picture of the circumstances of this restructuring, in part because of the subsequent changes in ownership of CAS, detailed in the ''Company Histories'' section above. From the evidence on the record, it is unclear whether Delta Cogne's liabilities were assumed, or whether they were reduced through the sale of assets. Therefore, in this preliminary determination, we have not focused on the distribution of liabilities between Delta Cogne and Cogne S.r.l. Rather, we have focused on the changes in shareholders's equity in Delta Cogne in 1988 and Cogne S.r.l. in 1989.

Under Articles 2446 and 2447 of the Italian Civil Code, companies are required to cover their losses through net worth—share capital plus retained earnings. The shareholder is required to subscribe to additional shares or place the company in liquidation if the corporate capital falls below the minimum level. As the sole shareholder of Delta Cogne, Finsider (wholly-owned by IRI) held this obligation for Delta Cogne. After the restructuring, ILVA (wholly-owned by IRI) held this obligation for Cogne S.r.l. Thus, we focused on the specific losses attributable to Delta Cogne, as shown by the changes in shareholders's equity and losses recorded on the balance sheet of Delta Cogne in 1988 and the balance sheet of Cogne S.r.l. in 1989, the period after the transfer. Due to the complexity of the restructuring, we have concluded that focusing on the changes between the balance sheets of the two Cogne companies would more accurately capture the assistance provided to the production of the subject merchandise, instead of focusing on the total debt forgiveness provided by IRI in connection with the creation of ILVA (see, *e.g., Electrical Steel*).

In 1988, Delta Cogne's share capital was 200 billion lire, with over 79 billion lire of losses for that year and over 90 billion lire in losses brought forward. In 1989, Cogne S.r.l.'s share capital was slightly above 150 billion lire with no losses for the year and none brought forward. The difference in the value of share capital between the two Cogne companies does not account for the losses the company had accrued at that time. The net result is that over 120 billion lire in losses remained with Finsider and were covered by IRI. The financial contribution to Cogne is the amount of Delta Cogne's losses that were covered by IRI when Cogne S.r.l. was created.

Because Cogne S.r.l. was assigned the assets of Delta Cogne but not the losses for which the company was also responsible, its financial position improved with the restructuring. Based on our analysis of the distribution of assets and losses from Delta Cogne to Cogne S.r.l., we preliminarily determine that Cogne S.r.l. received a financial contribution within the meaning of section 771(5) of the Act, in the amount of the losses it was not required to assume which were later covered by the GOI through IRI. *See, e.g., Certain Steel from Austria.* As restructuring benefits were provided only to the state-owned steel sector in Italy, we find the program to be specific within the meaning of section 771(5A)(D) of the Act.

To calculate the benefit, we treated the undistributed losses to Cogne S.r.l. as a grant given in 1989. We further determine that the distribution of losses is non-recurring, because the restructuring of the Italian public steel sector required authorization from IRI, the GOI, and the EC. We allocated this grant over 12 years as discussed in the

''Allocation'' section above, and applied the Department's standard methodology for non-recurring grants. Because the company was uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. We then applied the methodology described in the ''Change in Ownership'' section of this notice. We divided the benefit attributable to the POI by CAS's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 4.68 percent *ad valorem* for CAS.

B. Equity Infusions to ILVA and Finsider

The GOI, through IRI, provided equity infusions to Finsider, ILVA's predecessor, in 1985 and 1986. IRI also provided equity infusions to ILVA in 1991 and 1992.

We preliminarily determine that under section 771(5)(E)(i) of the Act, the equity infusions into Finsider in 1985 and 1986 and into ILVA in 1991 and 1992 confer a benefit in the amount of each infusion because the GOI investments were not consistent with the usual investment practice of private investors (*see* discussion of ''Equityworthiness'' above). These equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to Finsider and ILVA. Accordingly, we find that the equity infusions to Finsider and ILVA are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Subsidies Valuation Information'' section, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received. We have further determined these infusions to be non-recurring subsidies because each required a separate authorization from ILVA's or Finsider's shareholder (IRI). Consistent with the Department's past practice, these equity infusions are considered to be untied subsidies and, as such, benefit all of the company's domestic production (*see, e.g., Steel Wire Rod from Canada,* and *UK Lead Bar 95*). Since CAS has been privatized, we followed the methodology outlined in the ''Change in Ownership'' section above to determine the amount of each equity infusion attributable to CAS after the privatization. Because the company was uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. We then divided the benefit allocated to the POI by CAS's total sales during the POI. On this basis, we preliminarily determine the net subsidy to be 3.58 percent *ad valorem* for CAS.

C. Pre-Privatization Assistance and Debt Forgiveness

As discussed in the ''Company Histories'' section above, in 1992, Cogne S.p.A. acquired the shares of Robles S.r.l., later changing the company's name to Cogne Acciai Speciali S.r.l. (CAS). According to the GOI, the primary purpose in the creation of CAS was for the eventual privatization of the Aosta facility. Initially, CAS held some of the productive assets and the land on its books, while Cogne S.p.A. held the remaining assets. In 1993, the land held by CAS was transferred to Cogne S.p.A. However, from a financial perspective, the two companies were one; assets flowed between the two without restriction.

During 1993, Cogne S.p.A. (and its owner, ILVA) decided to sell its shares of CAS through a bidding process. According to CAS's questionnaire response, at the same time, Cogne S.p.A. also entered into a liquidation process, similar to a bankruptcy proceeding under the Italian Civil Code. Concurrently, Cogne S.p.A. and ILVA entered into negotiations with the Autonomous Region of Valle d'Aosta for the purchase of the land and buildings of the Aosta facility (see ''Valle d'Aosta Assistance'' below). Through this bidding process which was finalized as of December 31, 1993, a private company bought the shares of CAS from Cogne S.p.A. and the new owner took control of the company in April 1994. During this entire period, production of merchandise continued. The land and buildings were sold to the Autonomous Region of Valle d'Aosta, which then leased them back to the now-privatized CAS. According to the GOI questionnaire response, Cogne S.p.A. remained as a shell company, and was later folded into ILVA; ILVA was eventually liquidated in part and merged in part into IRITECNA, another IRI subsidiary company.

An examination of the financial statements of Cogne S.p.A. and CAS as of December 31, 1993, shows how the assets and liabilities were divided between the two companies in preparation for privatization. CAS had losses of 33 billion lire, liabilities of 161 billion lire, and 7 billion lire in share capital. Cogne S.p.A. had losses of 257 billion lire, 411 billion worth of unaccounted liabilities, and 10 billion lire worth of share capital. CAS received nearly all of the assets of Cogne S.p.A. Cogne S.p.A. retained nearly all of the liabilities. These liabilities had to be paid, assumed, or forgiven. The 1993 financial statement of Cogne S.p.A. also indicates that the distribution of assets and liabilities between the companies, and the consequences thereof, was recognized by Cogne S.p.A.'s owner, ILVA: at the point of CAS's privatization, ILVA issued a guarantee for Cogne S.p.A.'s liabilities for 380 billion lire. Thus, we conclude that the distribution of the assets and liabilities between CAS and Cogne S.p.A. at the time of privatization was made with the knowledge and approval of ILVA, Cogne's owner, and ILVA's owner, IRI. At the point of privatization, CAS was relieved of its obligations on a significant portion of the liabilities the Cogne companies had accrued. CAS has stated that ILVA was forced to cover these liabilities because it was Cogne S.p.A.'s sole shareholder and, therefore, like any sole shareholder (government-owned or private) responsible for the liabilities under Italian Law. However, according to the GOI, the liabilities assumed by ILVA, were later covered by IRI. The Department has consistently treated IRI as a government agency, and IRI's assumption of liabilities as countervailable. *See, e.g., Electrical Steel.*

Based on the information submitted, we conclude that this ultimate assumption of Cogne S.p.A.'s liabilities by IRI was part of the 3.5 trillion lire of ILVA's debts that were covered by a GOI aid package which was authorized by the EC. The complexity of the transactions involved in the internal restructuring and ultimate privatization of CAS is comparable to that of the benefits associated with Finsider-to-ILVA restructuring program described above. Thus, instead of focusing on the total amount of ILVA's debt forgiven or assumed by the GOI, and finding the amount attributable to CAS, we chose to focus our analysis on the benefits provided to CAS through the assumption of Cogne S.p.A.'s liabilities. *See, e.g., Electrical Steel*, 59 FR at 18366.

In previous cases, the Department has treated forgiven liabilities as a countervailable subsidy because the forgiven debt confers a benefit on the production of the new entity (*see, e.g., Electrical Steel*, 59 FR at 18359; *Trinidad and Tobago*, 62 FR at 5506). Therefore, we preliminarily find that, in connection with the privatization of CAS, the GOI (through IRI) provided a financial contribution, which provides a benefit in the amount of 411 billion lire to cover the liabilities that were not transferred to the newly privatized entity. The pre-privatization assistance is specific under section 771(5A)(D) of the Act because it was provided to one company, CAS, through ILVA and the IRI. Accordingly, we find that the pre-privatization assistance in the form of debt forgiveness is a countervailable subsidy within the meaning of section 771(5) of the Act.

We treat the undistributed liabilities as a grant to CAS, received at the time of privatization. Because this grant was part of the pre-privatization activities, and thus was a one-time occurrence, we find that this assistance is non-recurring. To calculate the benefit, we applied the Department's standard non-recurring grant methodology, set forth in the ''Allocation'' section of the *GIA*. Because the company was uncreditworthy in 1993, we applied a discount rate that included a risk premium. We also applied the methodology described in the ''Change in Ownership'' section above. We then divided the benefit allocated to the POI by CAS's total sales. On this basis, we preliminarily determine the countervailable subsidy to be 21.28 percent *ad valorem* for CAS.

Petitioners also alleged that CAS was provided with a restructuring fund at the time of privatization that provided countervailable assistance to the company. According to CAS and the GOI, when CAS was privatized it was given a restructuring fund of 105 billion lire to cover the approximately 33 billion lire in losses that were transferred with the company, and for other costs associated with the transfer. The restructuring fund was created from an additional transfer of assets to CAS from Cogne S.p.A. just prior to privatization. We found no indication of capital infusions by ILVA, IRI, or the GOI before this restructuring fund was established. We preliminarily determine that any benefit from this restructuring fund has been captured by countervailing the net liabilities left in Cogne S.p.A., because the net liabilities left in Cogne, S.p.A. would have been reduced if the restructuring fund had not been transferred to CAS. Therefore, we preliminarily determine that the restructuring fund is already accounted for in the assumption of liabilities discussed above.

D. Capacity Reduction Payments Under Law 193/1984

Among the benefits provided by Law 193/1984 were payments to companies in the private steel sector which achieved capacity reductions consistent with an agreement by the European Coal and Steel Community (ECSC). This program was examined and found countervailable in *Certain Steel from Italy* (58 FR at 37332–3), based on the availability of benefits only to the private steel sector. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Valbruna received payments for capacity reduction in 1985 and 1986. Falck received payments in 1985. These payments were determined to be non-recurring grants. *Id*. To calculate the benefit attributable to Valbruna/Bolzano during the POI from the grants to Falck, we first determined the amount of Falck's grants attributable to Bolzano at the time the grants were given, using the ratio of Bolzano's assets to Falck's assets. We then allocated this amount over Valbruna/Bolzano's AUL to determine the benefit in each year. We then determined the amount of the benefit which remained with Bolzano after Bolzano was acquired by Valbruna in 1995, consistent with the methodology described in the ''Change in Ownership'' section above.

To calculate the benefit attributed to Valbruna/Bolzano from the grants Valbruna received, we allocated the grants over Valbruna/Bolzano's AUL to determine the benefit in each year. We then summed the benefit amounts attributable to the POI from Falck's and Valbruna's grants and divided the total benefit by Valbruna/Bolzano's total sales. On this basis, we preliminarily determine the countervailable subsidy to be 0.12 percent *ad valorem* for Valbruna/Bolzano.

E. Law 796/76 Exchange Rate Guarantees

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that had contracted foreign currency loans from the ECSC or the Council of Europe Resettlement Fund (CER) could apply to the Ministry of the Treasury (MOT) to obtain the guarantee. Under the program, loan payments are calculated based on the lira-foreign currency exchange rate in effect at the time the loan was approved. The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent. If the lire depreciated against the foreign currency, the MOT paid the difference between the ceiling rate and the actual rate. If the lire appreciated against the foreign currency, the MOT collected the difference between the floor rate and the actual rate.

The Department previously found the steel industry to be a dominant user of the exchange rate guarantees provided under Law 796/76, and on this basis, determined that the program was specific, and therefore, countervailable. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe (''Seamless Pipe'') from Italy*, 60 FR 31992, 31996 (June 19, 1995). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. This program provides a financial contribution to the extent that the lire depreciates against the foreign currency beyond the two percent band and provides a benefit in the amount of the difference between the two percent ceiling rate and the actual exchange rate.

We note that the program was terminated effective July 10, 1991, by Decree Law 333/91. However, payments continue on loans that were outstanding after that date. Bolzano was the only producer who used this program, and it received payments in 1996 on loans outstanding during the POI.

Once a loan is approved for exchange rate guarantees, payments are automatic and made on a yearly basis throughout the life of the loan. Therefore, we treat the payments as recurring grants. To calculate the countervailable subsidy, we used our standard grant methodology for recurring grants and expensed the benefits in the year of receipt. We divided the total payments received in 1996 on the two loans by the value of Valbruna/Bolzano's total sales in 1996. On this basis, we preliminarily determine the countervailable subsidy to be 0.08 percent *ad valorem* for Valbruna/Bolzano.

F. Law 227/77 Export Loans and Remission of Taxes

Under Law 227/77, the Mediocredito Centrale S.p.A. (Mediocredito), a GOI-owned development bank, provides interest subsidies on export credit financing. Under the program, the Mediocredito makes an interest contribution to offset the cost of a supplier's or buyer's credit financed by an Italian or foreign commercial bank. The holder of the loan contract pays a fixed, low-interest rate on export credits taken out through the program with a commercial bank. The Mediocredito guarantees a specified variable market rate, and pays the lender any shortfall between the guaranteed market rate and the fixed rate provided to the borrower. If the market rate falls below the rate provided to the borrower, the Mediocredito receives the difference. Interest payments are assessed on an annual basis, with contributions made by the Mediocredito every six months. In order to obtain the interest subsidy, an application which includes the export supply contract and the commercial loan agreement must be submitted to the Mediocredito. Upon approval, Mediocredito notifies the borrower of the new terms and conditions.

The export credit financing under Law 227/77 provides a financial contribution within the meaning of section 771(5)(D) of the Act and confers a benefit in the amount of Mediocredito's interest contribution. The Department's practice is to treat export loan programs, through which the government provides a benefit to the foreign importer, the same as programs that provide benefits directly to the exporter. *See e.g., Final Affirmative Countervailing Duty Determination: Steel Wheels from Brazil,* 54 FR 15523 (April 18, 1989) and *Porcelain-on-Steel Cookingware from Mexico: Final Results of Countervailing Administrative Review,* 56 FR 26064 (June 6, 1991). The contribution is made in connection with the exportation of the merchandise and provides a direct benefit to the production and distribution of products. We also find that Law 227/77 export financing is specific under 771(5A)(B) because it is provided solely to finance exports. Therefore, we preliminarily determine that Law 227/77 export financing constitutes a countervailable subsidy within the meaning of section 771(5) of the Act.

The GOI reported that under Law 227/77, ''[i]nterest subsidies are provided within the guidelines of the international agreement OECD Consensus'' and as such would qualify for an Item (k) exemption (GOI October 28, 1997, Questionnaire Response, on file in the CRU). Annex I to the WTO Agreement on Subsidies and Countervailing Measures contains the Illustrative List of prohibited export subsidies. Item (k) of Annex 1 states that certain export financing programs are not considered to be prohibited export subsidies if certain conditions are met, namely, ''* * * if a Member is a party to an international undertaking on official export credits * * * or if in practice, a Member applies the interest rate provisions of the relevant undertaking * * * .''

We are aware of the exemption under Item (k); however, we are unable to determine whether the interest rate available under Law 227/77 conforms with the OECD guidelines. We are countervailing the assistance provided by this program in accordance with our benefit-to-recipient standard (see SAA at 928) and will continue to examine this issue for the final determination.

CAS and Bolzano did not use this program. Valbruna used this program for a supply contract with its affiliated U.S. subsidiary, Valmix Corporation, which entered into a loan contract for purposes of importing merchandise manufactured by Valbruna. The term of the loan was 18 months and during the course of this financing arrangement, the Mediocredito made interest contributions to Valmix's commercial lender.

In order to obtain Law 227/77 export financing, a company must have already obtained a commercial loan. Thus, a company does not know at the time it takes out the commercial loan whether it will receive the reduced interest rate available under Law 227/77. Therefore, we consider these interest contributions to be grants. Because Law 227/77 provides on-going interest contributions over the life of the loan, we find that it provides recurring grants. *See GIA.* We divided the total amount paid by the Mediocredito on the Valmix loan during the POI by Valbruna/Bolzano's total exports to the United States. On this basis, we preliminarily determine the countervailable subsidy to be 0.15 percent *ad valorem* for Valbruna/Bolzano.

Programs of the Regional Governments

A. Valle d'Aosta Regional Assistance Associated with the Sale of CAS

As discussed in the ''Company Histories'' section above, in 1993, the GOI privatized CAS. While the company operations were sold in a bidding process to the company's present owners, the land and buildings were sold to the Autonomous Region of Valle d'Aosta. The Regional Council of Valle d'Aosta, under Regional Law 4 of January 26, 1993, authorized negotiations with the ILVA Group for the acquisition of the property and buildings, including the hydroelectric plants which were the property of ILVA Centrali Elettrische S.p.A. (ICE). This ''urgent'' law also outlined a plan for the Region to reclaim and recover the environmental condition of the industrial area of Cogne. As also stated in the law, a fundamental goal was ''to enhance the industrial activities of 'Cogne S.p.A.' in order to ensure adequate employment levels.''

Protocol agreements for the triangular transaction were signed by the Region, ILVA, and GE. VAL. S.r.l., the purchaser of CAS's shares (now MEG), on November 19, 1993. The Region, through its wholly-owned financing corporation, Finaosta S.p.A., agreed to (1) purchase the land, including the ICE hydroelectric plants for 150 billion lire, in five annual installments, (2) to construct a waste plant, (3) to cover the costs of environmental reclamation on the land, up to 32 billion lire in accordance with a third-party estimate, and (4) to supply electricity directly to CAS from the ICE plants. These commitments were conditional upon ILVA entering into a contract with a private party for the transfer of CAS by December 31, 1993, and transferring CAS with a restructuring fund. The purchaser of CAS's shares agreed to (1) to vacate and abandon areas of the property not used in production activity and (2) to guarantee that at least 800 employees would be employed by CAS after privatization.

Because of the complex nature of these transactions, which included different elements that were alleged to provide subsidies to CAS, we have analyzed each section separately as detailed below.

1. Purchase of the Cogne Industrial Site. Under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia,* confer a benefit. In the case of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration, or, in the case of the government acquiring goods, for more than adequate remuneration. The adequacy of remuneration is normally determined in relation to prevailing market conditions for the good or service provided in the country of exportation. Section 771(5)(E) of the Act states, ''[p]revailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Problems can arise in applying this standard when the government is the sole purchaser of the good or service in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country (*e.g.,* private prices, competitively-bid prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been purchased for more than adequate remuneration. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being purchased at a price which reflects adequate remuneration. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany,* 62 FR 54990 (October 22, 1997) (*German Wire Rod*) at 54994.

In order to determine whether Valle d'Aosta acquired the Cogne industrial area for more than adequate remuneration, we would normally have compared this acquisition to a similar market transaction, *e.g.*, a comparable sale of commercial real estate. The Autonomous Region of Valle d'Aosta provided information on the market for industrial land within its borders. The Region indicated that because of the location and terrain of its land, there is very little viable industrial property. The Region reported that it has purchased other industrial areas, but that the largest was only 12 hectares, in comparison to the 100 hectares of the Cogne industrial site. Therefore, we understand that there are no private purchases of industrial sites comparable in size to the Cogne industrial property that are representative of the prevailing market conditions by which to assess the adequacy of remuneration for the purchase of the Cogne industrial site. We also found no information about any other market transactions that could serve as an appropriate benchmark in determining the adequacy of remuneration.

We next turned to the actual purchase price for the site to examine whether this price was determined in reference to market principles. The acquisition price that the Region paid for the Cogne industrial site was determined by a third-party study, undertaken by a private firm. We examined a copy of this study provided by the Region. At the Region's request, the Descriptive Report provided by American Appraisal Italia S.r.l., presented estimated purchase prices for the Cogne industrial site based on valuation of the land and buildings contained in the area. The appraisal included a detailed inventory of the many buildings and structures on the property, which could continue to be used, and the costs involved to destroy the others. The study was conducted in reference to market-based principles and included a thorough examination of the value of the property, including estimates based on different scenarios for the future use of the property. We understand that this appraisal was used by the parties in their negotiations. Based on our examination, we conclude that the prices contained in the Appraisal are a reasonable benchmark for determining whether the price paid by the Region was determined in reference to market conditions. Because the price paid for the Cogne industrial area was not more than the estimates, we preliminarily determine that the Autonomous Region of Valle d'Aosta did not acquire the site for more than adequate remuneration. Therefore, we preliminarily determine that the purchase of the Cogne industrial site does not constitute a subsidy within the meaning of section 771(5) of the Act.

2. Lease of Cogne Industrial Site. Under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia,* confer a benefit. In the case of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration. The adequacy of remuneration is normally determined in relation to prevailing market conditions for the good or service provided in the country of exportation. Section 771(5)(E) of the Act states, ''[p]revailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Problems can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country (*e.g.,* private prices, competitively-bid prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. The Department has recognized several options with respect to the leasing of land, ''to examine whether the government has covered its costs, whether it has earned a reasonable rate of return in setting its rates and whether it applied market principles in determining its prices.'' *See e.g., German Wire Rod* at 54994. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

The Region agreed in the 1993 protocol agreement to lease part of the acquired industrial site to CAS. That agreement also explains that the Region decided to undertake the transaction, because ''* * * of the seriousness of the general economic situation and that of the steel industry at the present time, [the Region] has decided to intervene with actions specifically aimed at fostering the continuation of this activity, with the precise objective of protecting jobs * * *.'' The landlord-tenant relationship between CAS and the Region was developed based on the understandings and stipulations enumerated in the protocol agreements and Regional Law No. 17 of 1994.

Until an official lease was signed between CAS and Struttura Valle d'Aosta S.r.l. (Structure), a company wholly-owned by the Region, CAS's use of the Cogne site was governed by a lease which had been signed by CAS and Cogne S.p.A. The protocol agreements required that this lease be established for a transition period. The Region accepted the terms of lease established between the two affiliated Cogne companies until another could be negotiated. An official lease between Structure and CAS was not signed until April 1996. The terms of the CAS-Structure contract granted CAS a 30-year lease. The lease required CAS to vacate certain areas and buildings between the beginning of 1995 and the end of 1996. Under both the CAS-Cogne S.p.A. lease and the CAS-Structure lease, the annual rent of 770 million lire was due in quarterly deferred payments. The lease also stipulated that CAS held responsibility for extraordinary maintenance.

We would normally evaluate the adequacy of remuneration of lease rates in reference to an alternative market price, *e.g.*, lease rates of comparable commercial real estate. However, as discussed above, there is little industrial property in Valle d'Aosta. We also understand that there is no comparable commercially leased property in the region. Unlike the situations examined by the Department in other cases, there are no other leases that could possibly serve as a benchmark for determining the adequacy of remuneration. *See, e.g., German Wire Rod* and *Trinidad and Tobago.*

We therefore examined the Structure-CAS lease to see if its terms appear to reflect normal market conditions. Most of the lease provisions establish CAS's obligations to return part of the property it formerly occupied, the time limits for the removal of its equipment, the incentives for meeting the deadlines, and the penalties for failing to meet these deadlines. We note that the lease includes a clause under which CAS is entitled to a payment for vacating the agreed-upon areas within the specified time limits. However, CAS reported that it has not received such a payment to date. The lease also contains provisions relating to the disposal of industrial waste because Valle d'Aosta has not constructed the waste disposal facility discussed in the protocol agreement. Other clauses regarding indemnity, taxes, etc., seem comparable to those likely to be in a lease between two private parties, and appear to reflect conditions that would be set for a normal commercial lease.

However, as noted in the preamble of the lease, the Structure-CAS lease was intended to further implement the protocol agreements. The preamble of the protocol agreements states, ''* * * the Region, which is aware that the steel production activity carried on, at the present time, by Cogne constitutes a very significant reality in the economic and industrial structure of Valle d'Aosta, and is also aware of the seriousness of the general economic situation and that of the steel industry at the present time, has decided to *intervene with actions specifically aimed at fostering the continuation of this activity, with the precise objective of protecting jobs* * * *'' (emphasis added). The parties specifically agreed that under the protocol agreement CAS would maintain at least 800 employees at the facility. These goals would not normally be included in an agreement negotiated between private parties; a lessee would not normally be obligated to commit to a certain employment level. Also, in response to our questions about the return on its investment, the Region of Valle d'Aosta clarified its goals related to the transaction, stating ''* * * it is not possible for use [sic] to provide within this context a detailed financial analysis of the time required to recoup the costs and the annual estimated rate of return on the investment made by the Region at the time the purchase was made * * * as such an analysis would not take into account the social, environmental and urban renewal considerations, which it should be stressed were decisive for the decision to approve the Regional Law that authorized the purchase.'' A private actor considering the purchase leaseback of real estate would normally undertake a detailed financial analysis before leasing a large piece of property. Thus, we preliminarily conclude that the negotiations between CAS and the Autonomous Region of Valle d'Aosta were not conducted in reference to normal market considerations.

We then turned to the terms establishing the lease rates in order to determine whether the Region charged a lease rate that reflects an adequate return on its investment. Because we have no market leases with which to compare this lease, we determined that it was appropriate to construct a reference price for the lease of the land, using standard real estate analysis principles. *See, e.g.,* Edward John Golden, *The Art and Science of Real Estate Investment Analysis* (1980). The type of transaction presented here is normally called a purchase leaseback: the Region purchased the land and now leases it back to the former owner/occupant. In evaluating a purchase leaseback, one way to conceptualize the transaction is to think of it as an asset that is being borrowed. In a lease, an asset is borrowed for a set period of time and the price of the transaction is normally established based on the value of the use of the asset over time. There are several ways to value commercial property over time, the most conservative of which accounts for the depreciation of the buildings. Only the value associated with the buildings is amortized; land values are held constant and the benchmark price reflects only the interest paid with respect to the land.

In the instant case, the market value of the land and buildings covered by the lease was established by the third party appraisal discussed above. We used the purchase price for the land and buildings currently used by CAS (not including the vacated property). We would have adjusted for the depreciation of the buildings over time by amortizing their value. However, because we did not have a breakdown of the value of the land and buildings, we could not make this adjustment. We will examine this issue further for our final determination. In addition, we noted that according to the GOI, Italian law obligates landlords to cover the costs of extraordinary maintenance. Under the Structure-CAS lease, CAS was assigned the obligation to perform extraordinary maintenance and the parties negotiated a rate which would take those maintenance costs into consideration. Although CAS reported costs for extraordinary maintenance during the years of the lease, we were unable to examine fully these costs to ensure that the values reported by CAS as extraordinary maintenance did not include work more appropriately termed normal maintenance. In addition, we did not have the information to calculate an adjustment to our benchmark for the cost of extraordinary maintenance. Therefore, we did not make an adjustment for maintenance for the preliminary determination. We will also examine this issue for our final determination.

To determine if the lease was established consistent with market principles, we examined the return to the Region of Valle d'Aosta on their investment in the industrial site. Thus, we multiplied the value of the asset, *i.e.*, the price paid by the Region for the land and buildings, by an interest rate that represents the return an investor would expect to earn on an alternative investment. For this preliminary determination, we used the average interest rate on treasury bonds as reported by the Banca D'Italia. However, the Department normally does not use government interest rates in benchmark calculations. *See, e.g., Final Affirmative Countervailing Duty Determination Oil Country Tubular Goods from Israel*, 52 FR 1649 (January 15, 1987). Therefore, we will seek a rate for the final determination that may be more indicative of market behavior. We used this analysis to establish a benchmark for determining whether the annual lease rate charged by the Region reflected adequate remuneration. We compared this amount to the amount actually paid by CAS during the POI. Based on this comparison, we found that the Region is not receiving an adequate rate of return on its investment. This finding corroborates our conclusion that the lease terms were not established based on normal market conditions. Therefore, we preliminarily determine that the lease was provided for less than adequate remuneration.

Through this lease, the Autonomous Region of Valle d'Aosta made a financial contribution to CAS within the meaning of section 771(5)(D)(iii) of the Act, equal to the difference between what would have been paid annually in a lease established in accordance with market conditions and what was actually paid. The lease is specific within the meaning of section 771(5A)(D) of the Act, because the lease rate is limited to CAS. Therefore, we preliminarily determine that the CAS industrial lease is a countervailable subsidy within the meaning of section 771(5) of the Act.

To calculate the benefit, we found the difference between the amount that would have been paid during the POI if the lease rate had been determined with reference to market conditions and the amount actually paid. We divided the amount by CAS's total sales in 1996. On this basis, we preliminarily determine the countervailable subsidy to be 0.53 percent ad valorem for CAS.

3. Provision of Electricity. As described above, the Autonomous Region of Valle d'Aosta also acquired the shares of ICE, the operator of the hydroelectric plants, which is now known as Compagnia Valdostana delle Acque S.p.A. (Valdostana), when it purchased the Cogne industrial site. The Region planned to supply electricity directly to CAS, and had applied to establish a consortium, with CAS as a shareholder, to sell directly to customers instead of to ENEL, the National Electricity Board. Petitioners alleged that this provision of electricity may constitute a countervailable subsidy under section 771(5) of the Act.

However, according to Valle d'Aosta and the GOI, the application to establish the consortium has not been approved and Valdostana has not been permitted to supply electricity to CAS. Instead, Valdostana continues to sell its production to the National Electricity Board, ENEL. CAS purchases electricity from ENEL in accordance with the standard provisions applied to other commercial electricity users in Italy. Therefore, as Valdostana has not created a special consortium to provide electricity to CAS, and CAS appears to obtain its electricity through ENEL like other firms in Italy, we preliminarily find that this program does not exist.

4. Waste Plant. As described above, Valle d'Aosta agreed to construct a waste plant, for CAS and other users, as one of the terms of the protocol agreements. Petitioners alleged that the construction of the waste plant, which would have been used by CAS, constituted a countervailable subsidy. However, Valle d'Aosta reported that the waste plant is still in the planning stages and construction has not begun. Also, there is no indication from information on the record that funds have yet been expended on this facility. However, we will continue to examine this issue for the final determination. Based on the above, we preliminarily determine that this program does not exist.

5. Loans Provided to CAS to Transfer Its Property. In the protocol agreements of November 1993, the Autonomous Region of Valle d'Aosta agreed to provide financing through Finaosta S.p.A. for the costs involved with the transfer of CAS property off the portion of the site not subject to the lease. After the environmental reclamation of the land, Valle d'Aosta planned to develop facilities for small and medium-sized enterprises on this portion of the site. Accordingly, the Regional Council authorized this financing in Law 37 of August 30, 1995. The law authorized financing up to 25 billion lire, ''to cover the expenses for the transfer of installations, warehouses, utilities and offices from the area.'' *See* Questionnaire Response from the GOI, dated October 28, 1997, on file in the CRU. While the financing was discussed in the protocol agreements, we found no indication in the appraisal, or elsewhere, that these loans were factored into the purchase price for the land. Therefore, we are analyzing the transfer loans as a separate subsidy event to determine whether they are countervailable.

Finaosta provided this financing in three separate loan agreements over 1996 and 1997 with the interest rate set at 50 percent of the Rendistato interest rate (as published in *SOLE 24 Ore*) for each loan. Under the terms of each loan contract, a deferred six-month payback schedule was established. Each tranche received an eighteen-month, interest-free grace period.

In accordance with ECSC procedures, the GOI notified this loan to the EC for evaluation of whether it constituted ''State assistance'' to CAS. In its decision of June 15, 1995, the EC determined that the loan was not aid, but instead an indemnity to CAS. The EC found that the total savings from the reduced interest rate, estimated at 4.6 billion lire, was less than the cost of the transfers, 4.9 billion lire, according to an independent estimate. The EC also stated that the Autonomous Region of Valle d'Aosta had unilaterally terminated part of CAS's lease (for the property to be vacated), and the loan represented compensation for the costs associated with the partial termination of the contract by the landlord.

Notwithstanding the EC's determination, we conclude from the facts presented in this proceeding that the transfer loan is not an indemnity. Pursuant to the protocol agreements, all parties agreed that CAS would vacate part of the property before any lease was signed. The transfer of property from part of the land was one of the conditions of the leaseback. From the information on the record, there is no indication that the lease, or any of the other agreed-upon stipulations, was unilaterally terminated. In addition, according to the protocol agreements, the Autonomous Region of Valle d'Aosta agreed to provide ''financing'' for the costs. CAS reported that it submitted invoices and estimates to Finaosta in order to receive each individual loan. CAS also reported that an independent appraiser estimated the cost of the relocation at 4.945 billion lire (*see* submission from CAS, dated December 17, 1997, on file in the CRU).

Thus, we compared the interest rate provided under these loans to the average interest rates on medium and long-term loans as established by the GOI's survey and found that the rate provided was lower. Therefore, through these transfer loans, the Region of Valle d'Aosta made a financial contribution that provided a benefit to the recipient in the difference between what CAS pays on these loans and what CAS would pay on a comparable commercial loan. The transfer loans are *de jure* specific within the meaning of section 771(5)(D) of the Act, because their provision is limited, by law, to CAS. Therefore, we preliminarily determine that the transfer loans are a countervailable subsidy within the meaning of section 771(5) of the Act.

In the POI, CAS received a benefit from one of the relocation loans. To calculate the benefit, we employed the Department's standard long-term loan methodology. *See, e.g., GIA.* We divided the benefit by the 1996 sales of CAS. On this basis, we preliminarily determine the countervailable subsidy to be 0.37 percent *ad valorem* for CAS.

B. Valle d'Aosta Regional Law 64/92

Law 64/92 of the autonomous region of Valle d'Aosta provides funding to cover up to 30 percent of the cost of installing environmentally-friendly industrial plants in the province. Administered by the Industry, Craft, and Energy Department (ICED), the program was initiated in 1993. Any firm in Valle d'Aosta may apply to the ICED to have part of its costs covered for a specific environmentally friendly project. According to the application procedures established by the ICED, a firm must submit a separate application for each individual project. A technical consultant committee appointed by the ICED evaluates each application to determine whether the proposed project would reduce environmental pollution in the province. Each project must receive the approval of the technical consultant committee in order to receive funding from the Regional Authority. Once a project is approved, the Regional Authority will provide a grant of up to 30 percent of the cost of the project. These grants provide a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

We analyzed whether the program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D) (i) and (iii) of the Act. We examined the eligibility criteria contained in the law, and find that the law is not *de jure* specific because the enacting legislation does not explicitly limit eligibility to an enterprise or industry or group thereof. We then examined data on the provision of assistance under this program to determine whether Law 64/92 meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. Since the inception of the program, the authorities have approved the applications of nine firms in several different industries. While this alone would be sufficient for a finding of *de facto* specificity because there are only a few companies in a few industries that have received assistance under this program, we also examined data on the value of grants given to these firms. CAS and a firm in the food and beverage industry received close to two-thirds of the total assistance awarded, with each firm receiving approximately one-third of the total assistance. The remaining third of the assistance was distributed to the other seven firms. As such, CAS received a disproportionate share of the total assistance under this program. On this basis, we find Law 64/92 to be *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that Law 64/92 provides a countervailable subsidy within the meaning of section 771(5) of the Act.

CAS received funding for three projects under this law: two were approved in 1995 and one was approved in 1996. As CAS submitted a separate application to the regional authority for each project, we are treating the grants received under this program as non-recurring (*see GIA*). However, the total of the two grants approved in 1995 did not exceed 0.5 percent of sales in 1995. As such, these grants would be attributable solely to 1995 and would not be allocated over time (*see GIA*). In addition, the grant approved in 1996 is also less than 0.5 percent of sales in 1996. As such, we are allocating the entire value of this grant to the POI.

To calculate the countervailable subsidy, we divided the total amount of the 1996 grant by the value of CAS's total sales. On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for CAS.

C. Valle d'Aosta Regional Law 12/87

Law 12/87 of the Autonomous Region of Valle d'Aosta funds the promotion of commercial activities of local firms in other regions of Italy, and abroad. The Law became effective in 1987, and is administered by the ICED. Under the provisions of the Law, funding can only be provided to companies for participation in shows, fairs, and exhibitions in Italy and abroad, and for participation in delegations for commercial promotion abroad. Companies apply for funding up to 30 percent of costs for promotional activities in Italy (up to 10 million lire) and 40 percent of the costs for promotional activities abroad (up to 15 million lire). CAS submitted three applications for funding under this program. The region approved and funded two of the proposals, both in 1996: a grant of 15 million lire for participation in the Singapore Wire & Cable Fair and a grant of 12.7 million lire for participation in the Dusseldorf Wire Fair. While neither show was held in the United States, both included numerous U.S. participants.

Law 12/87 provides a financial contribution within the meaning of section 771(5) of the Act, and provides a benefit to the recipient in the amount of the grant. The Department has recognized that general export promotion programs, programs which provide only general informational services, do not constitute countervailable subsidies. (*See, e.g., Fresh Cut Flowers from Mexico,* 49 FR 15007 (1984)). However, where such activities promoted a specific product, or provided financial assistance to a firm, we have found the programs to constitute export subsidies. (*See, e.g., Fresh Atlantic Groundfish from Canada,* 51 FR 10041 (1986); and *Fresh Cut Flowers from Israel,* 52 FR 3316 (1987)). Because financial assistance under this law was provided to CAS for the promotion of its exports, we preliminarily find the assistance to CAS constitutes an export subsidy within the meaning of section 771(5A)(B) of the Act.

We find that the grants received under this program are non-recurring because they are exceptional rather than ongoing events (*see GIA*.) Each project funded by a grant requires a separate application and approval by the regional authority. However, the grants did not exceed 0.5 percent of CAS's total exports in the year they were received. Therefore, in accordance with our practice, we allocated the entire amount of the grant to the year of receipt. We divided the total amount of the two grants by the value of CAS's total exports during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent *ad valorem* for CAS.

D. Province of Bolzano Assistance: Purchase and Leaseback of Bolzano Industrial Site

As discussed in the ''Company Histories'' section above, in 1995, Falck sold Bolzano to Valbruna. Concurrent with the change in ownership, Falck and Bolzano entered into negotiations to sell the Bolzano industrial site land to the Province of Bolzano. Two pieces of property (land and buildings) were subject to these negotiations, the ''Stabilimento Sede,'' which was owned by Bolzano, and the ''Stabilimento Erre,'' owned by Immobiliare Toce, a subsidiary of Gruppo Falck with real estate holdings. The purchase price for the Stabilimento Sede and Stabilimento Erre, approximately 63 billion lire, was established by the cadastral office of the Province. The Province paid for the property in full, with funds authorized under the Provincial Council Resolution 850 of February 20, 1995. Valbruna entered into concurrent negotiations with the Province for a long-term lease of the Bolzano industrial site.

1. Purchase of Bolzano Industrial Site. Under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia,* confer a benefit. In the case of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration, or, in the case of the government acquiring goods, for more than adequate remuneration. In assessing the adequacy of remuneration of this transaction, we have applied the standards discussed in the ''Purchase of the Cogne Industrial Site'' above.

In order to determine whether the Province of Bolzano acquired the Bolzano industrial site for more than adequate remuneration, we would normally have compared this acquisition to a similar market transaction in the Province. Although the Province of Bolzano provided some information on the provincial territory and market for industrial property, like the Autonomous Region of Valle d'Aosta, there is very little industrial property in the Province. The Province reported that only 530 hectares are occupied by industrial firms. The Province also reported that no other property transactions occurred around the time that it purchased the Bolzano industrial site. Thus, we understand that there are no private purchases of industrial sites comparable in size to the Bolzano property that are representative of the prevailing market conditions by which to assess the adequacy of remuneration for the purchase of the Bolzano industrial area. As such, there is no information on the record about other market transactions that could serve as an appropriate benchmark in determining whether the Province purchased the property for more than adequate remuneration.

Valbruna indicated that it had agreed to purchase the Bolzano site at the price determined by the province, if the province and Falck were unable to reach an agreement for the purchase of the property. While Valbruna was a party to the series of transactions, as a private party, its interests would not have been served by agreeing to pay an inflated price for the property. Therefore, Valbruna can be considered an uninterested third party for purposes of evaluating whether the price of the property was established in reference to market conditions. Since Valbruna agreed to pay the price determined by the cadastral office if the province did not purchase the site, we preliminarily determine that the price the Province of Bolzano paid was established in accordance with normal market conditions. On this basis, we conclude that the Province of Bolzano did not purchase the Bolzano industrial site for more than adequate remuneration. Therefore, we preliminarily determine that the purchase of the Bolzano industrial site does not constitute a subsidy within the meaning of section 771(5) of the Act.

2. Lease of Bolzano Industrial Site. As discussed above, under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia,* confer a benefit. In the case of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration, or, in the case of the government acquiring goods, for more than adequate remuneration. In assessing the adequacy of remuneration of this lease agreement, we applied the standards discussed in the ''Lease of the Cogne Industrial Site'' above.

Concurrent with the sale of Bolzano and the sale of the property, Valbruna/Bolzano began negotiations with the Province of Bolzano to lease the Bolzano industrial site (including the Stabilimento Sede and the Stabilimento Erre) from the Province. Valbruna/Bolzano and the Province of Bolzano signed a thirty-year lease on July 31, 1995, for the Bolzano industrial site.

With respect to the lease of land and buildings, adequacy of remuneration would normally be evaluated in reference to an alternative market price, *e.g.,* lease rates of comparable commercial real estate. However, as described above, there is little comparable commercial property in the Province. We also understand that there is no comparable commercially-leased property in the Province which could be used to establish a benchmark to evaluate the adequacy of remuneration in Valbruna/Bolzano's lease. The Province did provide some information on two leases it has with other private parties, however, the amount of property covered by these leases is much smaller than that covered by the Valbruna/Bolzano lease, and therefore, inappropriate for comparison purposes. Thus, there are no other leases that could possibly serve as a benchmark for determining the adequacy of remuneration.

We therefore examined the lease for the Bolzano industrial site to determine whether its terms reflected normal market conditions. In general, the terms of the lease appear to reflect conditions that would be set for a normal commercial lease. However, as discussed in the public version of the November 4, 1997, response of the GOI (public version on file in the CRU), the lease requires Valbruna/Bolzano to maintain a minimum employment level of 650 employees at Bolzano. We note that this minimum employment level requirement can be waived under certain circumstances, such as technological improvement. Notwithstanding the waiver provision, however, the record evidence indicates that the Province of Bolzano intended to preserve jobs at the Bolzano facility through this lease. Although the Province claimed that it includes similar requirements in the leases it has offered other parties, we do not find this clause to be indicative of normal market considerations because such employment obligations would not normally be included in agreements negotiated between private parties. Thus, we preliminarily conclude that the negotiations between Valbruna/Bolzano and the Province of Bolzano were not conducted in reference to normal market considerations.

We then turned to the terms establishing the lease rates in order to determine whether the Province of Bolzano charged a lease rate that reflects adequate remuneration. Because we have no market leases with which to compare this lease, we determined that it was appropriate to construct a reference price for the property using standard real estate analysis principles, as described in the ''Valle d'Aosta'' section above. We again followed the most conservative methodology in valuing the asset over time. In the instant case, the value of the property was found to be equivalent to a market-determined price. We would have made an adjustment to account for the depreciation of the buildings over time by amortizing their value. However, as we did not have a breakdown of the value of the land and buildings, we could not make this adjustment. We plan to add amortization of buildings to the calculated lease rate for the final determination.

According to the GOI, Italian law obligates landlords to cover the cost of extraordinary maintenance. Under the lease, Valbruna/Bolzano was assigned the obligation to perform extraordinary maintenance and the parties negotiated a rate which would take those maintenance costs into consideration. However, we did not have the information to calculate an adjustment to our benchmark for the cost of extraordinary maintenance. Therefore, we did not make such an adjustment for the preliminary determination. We will examine this issue for our final determination.

As described above, we used this analysis as a benchmark for determining whether the region obtained an adequate return on its investment, because we had no comparable market-determined leases to use in determining the adequacy of remuneration. Thus, we multiplied the value of the asset, *i.e.*, the price paid by the Region for the land and buildings, by an interest rate that represents the return an investor would expect to earn on an alternative investment. As described above, for this preliminary determination, we used the average interest rate on treasury bonds as reported by the Banca D'Italia. We used this analysis to establish a benchmark for determining whether the annual lease rate charged by the region reflected adequate remuneration. We compared this amount to the amount actually paid by Valbruna/Bolzano during the POI. Based on this comparison, we found that the Region is not receiving an adequate rate of return on its investment. This finding corroborates our conclusion that the lease terms were not establish based on normal market conditions. Therefore, we preliminarily find that the lease was provided for less than adequate remuneration. Through this lease, the Province of Bolzano made a financial contribution to Valbruna/Bolzano within the meaning of section 771(5)(D) of the Act, equal to the difference between what would have been paid annually in a lease established in accordance with market conditions, and what was actually paid. The lease is specific within the meaning of section 771(5A)(D) of the Act, because the lease rate is limited to Valbruna/Bolzano. Therefore, we preliminarily determine that the Bolzano industrial lease is a countervailable subsidy within the meaning of section 771(5) of the Act.

To calculate the benefit, we found the difference between the amount that would have been paid during the POI if the lease had been determined with reference to market conditions and the amount that actually was paid. We divided this amount by Valbruna/Bolzano's total sales in 1996. On this basis, we preliminarily determined the countervailable subsidy to be 0.47 percent *ad valorem* for Valbruna/Bolzano.

3. Lease Exemption. Under the Province of Bolzano-Valbruna/Bolzano lease, Valbruna/Bolzano agreed to assume certain environmental reclamation costs instead of paying rent for the first two years of the lease. The GOI stated in its public version of the November 4, 1997, response that these costs were, in fact, more than the uncollected rent to date. However, in order to determine whether the nonpayment of rent for the first two years constituted a countervailable subsidy to Valbruna/Bolzano, we examined whether or not the Province of Bolzano would have been responsible for these environmental reclamation costs.

Under Italian law, the landlord would normally bear the responsibility for pre-existing environmental costs under a normal lease agreement. Valbruna/Bolzano reported some of the projects undertaken and their associated costs connected with this environmental reclamation. Most of the projects undertaken by Valbruna/Bolzano in exchange for the non-payment of rent related only to the plant and equipment owned by the company. The Province would not have had an obligation to undertake costs associated with plant and equipment it did not own. We preliminarily find that the relief from rent payment for the first two years of the Valbruna/Bolzano industrial lease provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue forgone, which provides a benefit in the amount of rent that would normally have been collected.

We preliminarily determine that the lease exemption was specific under section 771(5A)(D) of the Act because it was provided to a single enterprise, Valbruna/Bolzano. Therefore, we preliminarily determine that the exemption from payment of rent under the lease of the Bolzano industrial site provides a countervailable subsidy under section 771(5) of the Act.

To calculate the countervailable subsidy, we treated the exemption as a grant. Because the exemption from payment of the lease is limited to a specific period of time, which could not be extended without extraordinary government action, we find that it is non-recurring (*see GIA*). The lease stipulates payments every six months. Therefore, we treat each nonpayment as a non-recurring grant. There was one nonpayment in 1995, two in 1996, and one after the POI. Because the total amount in each year was less than 0.5 percent of Valbruna/Bolzano's total sales in the year of receipt, we allocate the grants to the year of receipt. Thus, we have allocated the full amount of the grants received during 1996 to the POI, in accordance with the Department's practice. We divided the grants received in 1996 by Valbruna/Bolzano's total sales. On this basis, we preliminarily determine the countervailable subsidy to be 0.38 percent ad valorem for Valbruna/Bolzano.

Programs of the European Commission

A. ECSC Article 54 Loans

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the iron and steel industries to finance modernization and the purchase of new equipment. Eligible companies apply directly to the EC for up to 50 percent of the cost of an industrial investment project. The Article 54 loan program is financed by loans taken out by the EC, which are then refinanced at slightly higher interest rates than those at which the EC obtained them.

The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel, Certain Steel from Italy*, and *UK Lead Bar 94*, because loans under this program are provided only to the iron and steel industries. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. This program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act to the extent that it provides loans with an interest rate less than what the recipient would pay on a comparable commercial loan and provides a benefit to the recipient in the difference between the amount paid on the loan and the amount which would be paid on a comparable commercial loan.

Valbruna did not use this program. Bolzano and CAS received Article 54 loans. Bolzano had two loans outstanding during the POI, one denominated in U.S. Dollars, the other in Dutch Guilders. CAS received one Article 54 loan with a variable interest rate on which no interest or principal were due during the POI. Consistent with the Department's loan methodology, the benefit would be received after the POI, and thus, the program is not used.

With respect to the loans to Bolzano, we would have used as a benchmark interest rate a long-term borrowing rate for loans denominated in the appropriate foreign currency in Italy. However, we were unable to find such rates. Therefore, we used the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve for the loan denominated in U.S. dollars, and the long-term bond rate in the Netherlands as reported by the International Monetary Fund for the loan denominated in guilders.[3] We then compared the cost of the benchmark financing for each loan to the financing Bolzano received under the program and found that both loans provided a financial contribution. To calculate the benefit in the POI, we employed the Department's standard long-term loan methodology. We calculated the grant equivalent and allocated it over the life of each loan. We also applied the methodology discussed in the ''Change in Ownership'' section above. We divided the benefit allocated to the POI by the 1996 sales of Valbruna/Bolzano. On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for Valbruna/Bolzano.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Law 46: Deliberazione Grants under the Technological Innovation Fund

Under the Deliberazione Law 46/82, Technological Innovation Fund (FIT), the GOI provides grants to companies for projects that contain a high degree of technological innovation. The program is administered through the Ministry of Industry. Eligibility criteria were established by the Interdepartmental Committee for Economic Planning (CIPI) in a resolution dated March 30, 1983, and a special technical committee evaluates all applications.

Each application must include a detailed description of the proposed technical project, which is evaluated by the technical committee on both its scientific and industrial merits and economic and environmental impact. If a proposal is deemed successful, the company will be termed ''innovative'' or ''highly innovative'' and then will become eligible for funding at 35 percent or 50 percent, respectively. The Ministry of Industry, acting on the opinions of the CIPI, then issues a decree declaring a specific company and project eligible for benefits. Through Law 46, the GOI makes a financial contribution that provides a benefit in the form of grants or low-interest loans. Valbruna, Bolzano, Delta Cogne (a CAS predecessor company), and Falck received assistance under this program during the allocation periods.

We analyzed whether the program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D) (i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The CIPI resolutions identified the

[3] We note that Bolzano entered into the loan contract for the loan denominated in U.S. dollars in 1979. However, the interest rate for that loan was renegotiated in 1992. Therefore, we have treated it as a new loan from that point and used a 1992 benchmark.

following broad categories as priority sectors for eligibility and participation in the program: automobile and automotive components, electronics, steel, aerospace, chemicals, motorcycle, agri-food, and environmental. Small and medium-sized enterprises from any sector are also eligible to participate in the program. We find that the FIT portion of Law 46/82 is not *de jure* specific because the enacting legislation, by including all small and medium enterprises, does not explicitly limit eligibility to a specific enterprise or industry or group thereof.

We then examined data on the distribution of assistance under this program to determine whether the Deliberazione program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found Law 46 Deliberazione benefits were distributed to a large number of firms in a wide variety of industries. The GOI also provided information on the sector-specific provision of benefits under the program. The electronics and chemicals industries received the largest percent of assistance provided to any of the sectors. In addition, ''other industries'' not specifically named received a large percentage of assistance. We found that the steel sector received 1.5 percent of total benefits awarded, and did not receive more than 3 percent of annual benefits awarded in any single year covered by the allocation periods. The steel industry received far less than a number of the other industries. Therefore, we preliminarily determine that the Law 46/82 Deliberazione program is not specific under section 771(5A)(D) of the Act.

We sought information from the GOI to determine whether export performance was a factor in determining eligibility for Deliberazione benefits. The GOI responded that export performance was not an eligibility criterion, but did indicate that a high percentage of exports, in terms of turnover, is one of the criteria examined under the economic impact analysis. Based on the information on the record, we do not find that the Law 46/82 Deliberazione Fund for Technological Innovation program meets the definition of an export subsidy within the meaning of section 771(5A)(B) of the Act. However, we will continue to examine whether provision of Law 46 Deliberazione assistance may be contingent upon export performance for the final determination.

B. Law 451/94 Early Retirement Benefits

Under Article 8 of Law 451/94, the GOI authorized an early retirement program to be implemented between 1994 and 1996. Under this program, a maximum of 15,500 (later amended to 17,100) workers could be retired early. Under Law 451/94, employees in the public and private iron and steel sector become eligible for retirement at age 50 for men and 47 for women. In order to qualify, the worker must have had 15 years of contributions to the early retirement program (under the provisions of Decree Law 503/92) or at least 30 years of regular contributions. The program was implemented to meet Italy's commitments for capacity reductions under the ECSC plan for rationalization of the iron and steel sector.

The provisions of Law 451/94 are similar to the early retirement provisions the Department has examined in prior cases (*e.g.,* Law 181/89, 193/84 and 223/91 in *Certain Steel from Italy* and *Electrical Steel).* The GOI, through the program, makes a contribution to the retirement program to allow each participating worker to retire with a full pension. These programs were designed to ease the collateral impact of the steel crises, allowing workers to retire instead of facing large numbers of layoffs.

The Department's practice with respect to early retirement and other prepension programs is articulated in the *GIA,* 58 FR at 37255: ''. . . in order for worker assistance programs to be countervailable, the company must be relieved of an obligation it would otherwise have incurred.'' In *Certain Steel from Italy,* we found that because of social unrest, companies could not layoff workers at will, thus early retirement programs provided a countervailable benefit because they allowed companies to reduce their payrolls. However, in *Electrical Steel,* the Department reversed this finding, determining that, when a company lays off workers, the company actually faces *higher* costs when a worker uses an early retirement provision instead of a standard severance package.

In this investigation, we examined whether Law 451/94 and similar provisions relieved any company of obligations to its workers. Bolzano is the only company that had workers retire under Law 451/94 during or before the POI. According to that company and the GOI, companies are able to lay off or fire workers at will. The obligations to those workers are dictated by Italian Labor Law. Pursuant to Article 2120 of the Italian Civil Code, workers are provided a minimum notice period and severance pay of approximately one month's salary. In order to participate in the early retirement program, workers, through the company, must apply to the GOI for consideration. Companies must continue to pay salaries until the applications are settled, through the end of the month following the approval of the application. Therefore, companies face the same, if not greater, financial commitments to their workers under Law 451/94 as they do under Article 2120 of the Italian Civil Code which governs obligations to workers in all industries. Accordingly, we preliminarily determine that Law 451/94 did not relieve companies of any obligation that they normally would incur, and, as such, we preliminarily find that Law 451/94 is not countervailable.

C. Law 308/82

In response to our request for information on ''other subsidies'' in the questionnaire, the GOI reported that Valbruna received grants for energy conservation under Law 308/82. However, this program was found to be non-countervailable in *Certain Steel from Italy* because it provided benefits to a wide variety of industries, with no sector receiving a disproportionate amount. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination.

III. Programs For Which We Need More Information

A. Province of Bolzano Law 25/81

The Province of Bolzano established programs under Law 25/81 to aid the commercial development of the province. In general, under this law, the province provides grants to companies whose technical fixed assets are below 8.5 billion lire, and targets advanced technology, energy consumption, and ecology projects. However, there are separate and distinct eligibility requirements set forth and benefits provided under Article 14 of Law 25/81. Under Article 14, companies in the manufacturing and mining sectors with at least 20 employees may qualify for restructuring grants. Unlike funding provided under other provisions of the law, there are no limitations on capital investment for companies which qualify for benefits under Article 14 (and Article 22 for conversion benefits). Therefore, we find it appropriate to examine Article 14 of law 25/81 as a separate program. *See, e.g., Live Swine from Canada; Final Results of Countervailing Duty Administrative Review,* 62 FR 18087, 18091 (April 14, 1997). Under Article 14 of Law 25/81, the Province of Bolzano provides financial contributions in the form of grants and low-interest loans.

Bolzano received restructuring grants pursuant to Article 14 in the years 1983, 1985, 1987, and 1988. It also received loans under Article 14, all of which were repaid prior to the POI. It did not receive assistance under any other Article of this law.

We note that on July 17, 1996, the EC found in its decision numbered 96/617/ECSC that the aid granted to Bolzano was illegal because it was not notified to the EC, and was ''incompatible with the common market pursuant to Article 4(c) of the ECSC treaty.'' *See* October 27, 1997, response of the EC, public version on file in the CRU. As a result, the EC ordered that all grants and loans made to Bolzano after January 1, 1986, be repaid. According to the EC's policy, Bolzano was not required to repay benefits conferred prior to January 1, 1986.

As discussed in the ''Company Histories'' section above, Falck sold Bolzano to Valbruna in 1995. According to the terms of the sale, Falck retained the liability for repayment of these benefits should the EC decide against Bolzano. Thus, the level of benefits attributable to production of subject merchandise does not change subsequent to the sale of Bolzano.

We analyzed whether Article 14 of Law 25/81 is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D) (i) and (iii) of the Act. We examined the eligibility criteria contained in Article 14, and found that the Article is not *de jure* specific because the enacting legislation does not explicitly limit eligibility to an enterprise or industry or group thereof. While the Province of Bolzano provided general information on the amount of benefits awarded per year under the entire law, we do not have information on the distribution of benefits under Article 14 of Law 25/81. Since we must examine distribution under Article 14 to determine if the program is specific, it is necessary to gather additional information from the Province of Bolzano. Therefore, for the purposes of this preliminary determination, we do not have enough information to evaluate whether Article 14 of Law 25/81 is specific under the Act. However, we will continue to examine whether Article 14 of Law 25/81 assistance may be *de facto* specific for the final determination.

B. European Social Fund

The European Social Fund (ESF) is one of the Structural Funds operated by the EC. The ESF was established in 1957 to improve workers' opportunities and raise their standards of living. It is based on Articles 123–128, 130(a)–130(e) of the EEC Treaty. The ESF principally provides vocational training and employment aids. There are five objectives identified under the ESF for funding: Objective 1 covers projects located in underdeveloped regions, Objective 2 covers areas in industrial decline, Objective 3 relates to employment of persons under 25, Objective 4 relates to restructuring companies, and Objective 5 relates to agricultural areas. The ESF provides funding for projects to train workers and promote employment. While funding is ultimately approved and provided by the EC, each Member State, in this case the GOI, is responsible for selecting plans to submit to the Commission. Each project must conform with the priorities and timetables approved by the Commission. All EC funding for Italian projects is paid to the Italian Ministry of the Treasury in ECUs. The Ministry then distributes funding to the approved participants, including national matching funds. Funds are distributed in three sections: one part upon approval of the project; one part after the program has been monitored; and the third after the conclusion of the program. Most projects last three to five years.

While the ESF funds general employment programs around the EU, under certain circumstances, companies may receive funding directly to implement training programs, or to recruit new employees. When provided to a company, the ESF provides a financial contribution to recipients which provides a benefit to the recipient in the form of a grant. Cogne, Valbruna, and Bolzano received ESF grants.

The Department has examined the ESF grant program in previous investigations and found it to be regionally specific within the meaning of section 771(5A) of the Act, because benefits have been provided under Objectives 1, 2, or 5(b) (*see, e.g., Pasta*). However the companies in this investigation received grants under Objectives 3 and 4. The EC indicated that Objectives 3 and 4 are broad initiatives that allow participation from companies in all areas. In *Pasta*, however, the Department found that only companies located in Objective 1, 2, or 5(b) regions received funds directly under this program. Since Cogne, Valbruna, and Bolzano are located in Objective 2 regions, the program may still be regionally-specific. Even though the companies implemented projects that received approval under Objective 3 and/or 4, the ESF may have provided funds directly to these companies because of their locations in Objective 2 regions. However, based on the information on the record, we are unable to determine whether the companies received funds due to their location. In addition, we were unable to obtain information on the distribution of assistance under Objectives 3 and 4. Therefore, we do not have enough information to make a determination on whether the assistance provided to Cogne, Valbruna and Bolzano is specific. We will continue to examine whether this assistance is specific for the final determination.

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the companies under investigation did not apply for or receive benefits under the following programs during the POI:

A. Grants for Interest Payments Under Law 193/1984

Article 3 of Law 193/1984, which came into effect on May 31, 1984, provided grants for interest payments on medium-term loans outstanding between January 1, 1983, and September 7, 1984 (three months after the law came into effect). These grants reduced the rate of interest on medium-term financing to 11 percent, with no reduction to exceed 10 percentage points. This program was available only to steel companies with medium-term debts outstanding during the period indicated. Bolzano received a grant for interest payments on two loans incurred during this period; Valbruna received interest payment grants in 1985 and 1986 for payments corresponding to debts on bond issuances which were outstanding during the eligibility period. Cogne did not receive any grants for interest payments under this program.

Because Bolzano was aware that it would receive grants on interest payments for loans provided after May 31, 1984, we treat Bolzano's grants as reduced-interest loans. However, because the loans for which Bolzano received interest payment grants were repaid in full prior to the POI, there is no benefit attributable to the POI. Thus, Bolzano effectively did not use this program during the POI.

At the time Valbruna made its bond issuances, the company did not know that the GOI would provide grants for interest payments under law 193/1984. Therefore, we are treating the assistance on interest payments on the two bond issuances as grants. Because Valbruna did not receive the grants on an ongoing basis, the Department considers this program to be non-recurring and therefore employed its standard non-recurring grant methodology (*see GIA*).

However the grants on interest payments Valbruna received in the years 1985 and 1986 were less than 0.5 percent of Valbruna's total sales in each of those years. Therefore, in accordance with the Department's practice, these non-recurring grant amounts are allocated to the year of receipt. Thus, Valbruna received no benefit under this program during the POI.

B. Law 46 and 706 Grants for Capacity Reduction

Article 20 of Law 46/1982 provided capital account grants for private steel companies that reduced their production capacity of raw, semi-finished, or rolled steel by closing down plants which were technologically obsolete or had marginal economic viability. The grants provided up to 100,000 lire for every ton of raw steel capacity which was reduced and up to 150,000 lire for every ton of semi-finished or rolled capacity which was reduced. In *Certain Steel from Italy* (58 FR 37333), the Department found that capacity reduction grants under Law 46 were specific because they were available only to companies in the private steel sector. Falck received grants in 1983 and 1984, which are outside the 12 year allocation period we are using in this investigation. Cogne, as a government-owned steel company, was presumably ineligible for grants under this program. However, the record evidence compiled in this investigation to date does not definitively state that only the private steel sector could receive assistance, and information on the record indicates that the GOI provided grants to one steel company in the Valle D'Aosta, where Cogne is located. Although, for purposes of this preliminary determination, we have concluded that benefits under this program were not used, we will request clarification on which company in Valle d'Aosta received grants under this program.

Section 4 of Decree Law 706/1985 was designed to complete the steel sector restructuring program and was a follow-on to the Law 46 capacity reduction program. It provided capital investment grants to steel producers which reduced production capacity by scrapping the rolling mills and the furnaces producing long products. None of the companies under investigation received grants under this program.

C. ECSC Article 56(2)(b) Retraining Grants

In 1994, Bolzano received a grant under the ECSC Article 56(2)(b). This grant was referenced on a line item of its financial statements, which led us, in part, to initiate on the ''subsidies for operating expenses and easy-term funds'' program (*see Initiation Notice* and ''Programs Determined Not to Exist'' section below). This program has been examined in several investigations by the Department and found to provide recurring benefits (*see e.g., German Wire Rod*). No information or evidence of changed circumstances has been submitted during this proceedings to warrant reconsideration of the recurring nature of the program. Therefore, since the grants were received in 1994, there are no benefits attributable to the POI and the program was not used.

D. Resider (II) Program

The Resider program was established by the EC to fund projects for the reclamation of steel areas. The Resider II program funds projects for the period 1993 through 1999. The Autonomous Region of Valle d'Aosta received funding under this program in 1996 to clean up the environmental damage on the Cogne industrial land that CAS no longer occupies. According to CAS, the GOI, and the EC, there is no connection between the benefits provided under this program and CAS. The assistance was provided after the land was purchased by the Autonomous Region of Valle d'Aosta. Further, as discussed in the ''Valle d'Aosta Assistance'' section above, the appraised value of the Cogne industrial site was reduced based on the costs of the reclamation. However, given the close proximity of the CAS facility to the area under reclamation, we will continue to examine whether CAS benefits from the reclamation project.

E. Law 675

1. IRI Bonds. We note that Delta Cogne, a predecessor of CAS, was assigned 54 billion lire worth of IRI debenture bonds on which the GOI made interest contributions between 1986 and 1993. In 1994, presumably because of the privatization of CAS, the bonds were assigned to another party. According to CAS, the bonds remained with Cogne S.p.A. Therefore, we believe that any debt obligation for which CAS may have been relieved would be captured in the ''Pre-Privatization Assistance'' program described above. During verification, we plan to examine the payment of interest contributions by the GOI and the assignment of the bonds. However, we preliminarily find that no benefits were provided to the subject merchandise under this program during the POI, and as such, this program was not used.

2. Mortgage Loans

3. Personnel Retraining Aid

4. Interest Grants on Bank Loans

F. Debt Forgiveness: 1981 Restructuring Plan

G. Law 481/94

H. Decree Law 120/89

I. Law 394/81 Export Marketing Grants and Loans

J. Law 488/92 and Legislative Decree 96/93

K. Law 341/95 and Circolare 50175/95

L. Valle d'Aosta Regional Law 16/88

M. Valle d'Aosta Regional Law 3/92

N. Bolzano Regional Law 44/92

O. Interest Rebates on ECSC Article 54 Loans

P. ECSC Article 56 Loans

Q. European Regional Development Fund

V. Programs Preliminarily Determined Not To Exist

Based on information provided by the GOI, we preliminarily determined that the following programs do not exist:

A. R&D Grants to Valbruna

We initiated on this program based on information contained in the petition regarding a program that provided research and development grants, which was discussed in an EC publication. According to the GOI, this program is the same as the Law 46 Deliberazione technological innovation program discussed in the ''Programs Preliminarily Determined To Be Not Countervailable'' section above. Accordingly, we preliminarily determine that this program does not exist.

B. Subsidies for Operating Expenses and ''Easy Term'' Funds

We initiated on this program based upon information contained in the petition and references in the annual reports of Valbruna and Bolzano, indicating receipt of ''subsidies for operating expenses'' and ''easy term funds.'' However, the companies reported that the line items in the annual reports refer to other programs examined in this investigation: European Social Fund, Law 308/82, and ECSC Article 56(2)(b) Retraining Aid.

C. 1993 European Commission Funds

We initiated on this program based on information in the petition indicating that the EC may have funded bailouts for state-owned and private-owned steel producers in Italy. However, based on information submitted on the record of this proceeding, the EC was examining the GOI's program. Therefore, it appears this program is identical to the Pre-Privatization Assistance program discussed above in the ''Programs Preliminarily Determined To Be Countervailable'' section of this notice.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation. As discussed in the ''Affiliated Parties'' section of this notice, we calculated a single rate for Valbruna/Bolzano. To calculate the ''all others'' rate, we weight-averaged the company rates by each company's exports of the subject merchandise to the United States.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain stainless steel wire rod from Italy, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice. We also note that pursuant to section 705(a)(1) of the Act, this investigation is now aligned with the antidumping investigations of certain stainless steel wire rod.

Ad Valorem Rate

Producer/Exporter	Net subsidy rate %
CAS	30.47
Valbruna/Bolzano	1.22
All Others	19.48

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held on March 9, 1998, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act.

Dated: December 29, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–271 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122297C]

Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); request for comments.

SUMMARY: NMFS announces the intent of the Caribbean Fishery Management Council (Council) to prepare a DSEIS on Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). Amendment 1 would establish a Marine Conservation District (MCD), approximately 20 square nautical miles in area, in Federal waters south of St. John, U.S. Virgin Islands (USVI). The purpose of this notice is to solicit public comments on the scope of the issues to be addressed in the DSEIS.

DATES: Written comments on the scope of the DSEIS must be received on or before February 6, 1998.

ADDRESSES: Comments on the scope of the DSEIS and requests for additional information on Amendment 1 should be sent to Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577.

FOR FURTHER INFORMATION CONTACT: Graciela Garcia-Moliner, 787–766–5926, or Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: In 1993, the Council's Marine Reserve Zoning Committee recommended the establishment of the first MCD in the U.S. Caribbean, in Federal waters south of St. John, USVI, seaward of the Virgin Islands National Park. A MCD is an area designed to protect coral reef resources, reef fish stocks, and their habitats. Fishing would be prohibited within the MCD, and the Council is considering a ban on the anchoring of fishing vessels in the MCD. Expected benefits include: (1) Establishment of a refuge and resource replenishment area to increase abundance and diversity of reef resources; (2) protection of critical spawning stock and recruits from overfishing, thus helping to ensure continued abundance of fishery resources; (3) physical protection of the coral reef structures; and (4) improvement of opportunities for eco-tourism that does not damage coral. Disadvantages include displacement of fishing effort to other areas and possible short-term loss of revenues for commercial fishermen, especially reef fish trap fishermen.

Scoping Process

Public hearings were held on these issues during March 1996 and October 1997 in the USVI. No additional scoping meetings are scheduled. The Council is requesting written comments on the scope of the issues to be addressed in the DSEIS.

Timetable for DSEIS Preparation and Decisionmaking Schedule

The Council intends to accept public comments on the completed DSEIS, prepare a final supplemental environmental impact statement (FSEIS), and submit the FSEIS to NMFS when it submits Amendment 1 for NMFS' review, approval, and implementation.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 31, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–288 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 97–1114270–7270–01; I.D. 111397A]

RIN 0648–ZA35

Financial Assistance for Research and Development Projects in the Gulf of Mexico and Off the U.S. South Atlantic Coastal States; Marine Fisheries Initiative (MARFIN)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: ACTION: Notice.

SUMMARY: Subject to the availability of funds, NMFS will continue MARFIN to assist persons in carrying out research and development projects that optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socio-economic assessment, management and conservation, selected harvesting methods, and fish handling and processing. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will select applications for funding. Areas of emphasis for MARFIN were formulated from recommendations received from non-Federal scientific and technical experts, and from NMFS research and operations officials.

DATES: Applications for funding under this program will be accepted between January 7, 1998 and 5 p.m. eastern daylight time on March 9, 1998. Applications received after that time will not be considered for funding. No facsimile applications will be accepted.

Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES**) from March 13, 1998, through March 16, 1998.

ADDRESSES: Send applications to: Ellie Francisco Roche, Competitive Programs Manager, State/Federal Liaison Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche,
813–570–5324.

SUPPLEMENTARY INFORMATION:

I. Authority

The Secretary of Commerce (Secretary) is authorized under 15 U.S.C. 713c–3(d) to carry out a national program of research and development addressed to such aspects of U.S. fisheries (including, but not limited, to harvesting, processing, marketing and to associated infrastructures), if not adequately covered by projects assisted under 15 U.S.C. 713c–3(c), as the Secretary deems appropriate.

II. Catalog of Federal Domestic Assistance (CFDA)

This program is described in the "Catalog of Federal Domestic Assistance" (CFDA) under program number 11.433, Marine Fisheries Initiative.

III. Program Description

MARFIN is a competitive Federal assistance program that promotes and endorses programs that seek to optimize research and development benefits from U.S. marine fishery resources through cooperative efforts that involve the best research and management talents to accomplish priority activities. Projects funded under MARFIN are focused into cooperative efforts that provide answers for fishery needs covered by the NMFS Strategic Plan, available from the Southeast Regional Office (see **ADDRESSES**), particularly those goals relating to rebuilding overfished marine fisheries, maintaining currently productive fisheries, and integrating conservation of protected species and fisheries management.

Emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through both short- and long-term research efforts, with consideration of the magnitude of the eventual economic or social benefits that may be realized. Short-term projects that may yield more immediate benefits and projects yielding longer-term benefits will receive equal consideration.

IV. Funding Availability

This solicitation announces that funding of approximately $1.10 million may be available in fiscal year (FY) 1998. MARFIN financial assistance started in FY 1986 for financial assistance to conduct research for fishery resources in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida. There is no guarantee that sufficient funds will be available to make awards for all approved projects.

Project proposals accepted for funding for a project period over 1 year that include multiple project components and severable tasks to be funded during each budget period will not compete for funding in subsequent budget periods within the approved project period. However, funding for subsequent project components is contingent upon the availability of funds from Congress and satisfactory performance and will be at the sole discretion of the agency. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any parts of the available funds.

V. Matching Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged and, in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant will be bound by the percentage of the cost share reflected in the cooperative agreement award.

The non-Federal share may include the value of in-kind contributions by the applicant or third parties or funds received from private sources or from state or local governments. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. Third party in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project and use of real or personal property owned by others (for which consideration is not required) in carrying out the projects. In 15 U.S.C. 713c–3(c)(4)(B) the amount of the grant is specified to be no less than 50 percent of the estimated cost of the project.

The total cost of a project begins on the effective award date of an authorized cooperative agreement between the applicant and the NOAA Grants Officer and ends on the date specified in the award. Accordingly, costs incurred in either the development of a project or the financial assistance application, or time expended in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

VI. Type of Funding Instrument

The cooperative agreement has been determined to be the appropriate funding instrument. NMFS is substantially involved in developing program research priorities, conducting cooperative activities with recipients, and evaluating the performance of recipients for effectiveness in meeting national and regional goals for fishery research in the southeastern United States.

VII. Eligibility Criteria

A. Applications for cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

1. Any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands.

2. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 app. U.S.C. 802). Colleges, universities, and game and fish departments of the several states are included in this eligibility criteria.

B. Federal agencies, Federal instrumentalities, and Federal employees, including NOAA employees (full-time, part-time, and intermittent personnel or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation or aid in the preparation of an application during the 60-day solicitation period, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact Ellie Francisco Roche at the NMFS Southeast Regional Office (see **ADDRESSE**S) for information on NOAA programs.

VIII. Award Period

The award period for the project may be made for more than 1 year consisting of one, two, or three budget periods that correspond to the funding for the proposed project components. The award period will depend upon the duration of funding requested by the applicant in the Application for Federal Assistance, the decision of the NMFS selecting official on the amount of funding, the results of post-selection negotiations between the applicant and NOAA officials, and pre-award review of the application by NOAA and Department of Commerce (DOC) officials. Normally, each project budget period may be no more than 12 months in duration. NOAA policy limits the total duration of a project to 3 years.

IX. Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 25 percent of the Federal share of the total proposed direct costs dollar amount in the application, whichever is less. Institutions with indirect cost rates above 25 percent may use the amount above the 25–percent level as part of the non-Federal share. A copy of the current, approved, negotiated Indirect Cost Agreement with the Federal Government must be included with the application.

X. Profit or Fees

Profit or management fees paid to for-profit or commercial organization grantees are allowable at the discretion of NOAA. However, they shall not exceed 7 percent of the total estimated direct costs. There must be no profit or fees to the recipient in any overhead charge. Payment of fees or profit is based on successful completion of project objectives.

XI. Application Forms and Kit

Before submitting an application under this program, applicants should contact the NMFS Southeast Regional Office for a copy of this solicitation's MARFIN Application Package (see **ADDRESSES**).

Applications for project funding under this program must be complete and in accordance with instructions in the MARFIN Application Package. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown, by category of expenditures, with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and must be one-sided. All incomplete applications will be returned to the applicant. Ten copies (one original and nine copies) of each application are required and should be submitted to the NMFS Southeast Regional Office, State/Federal Liaison Office (see **ADDRESSES**). OMB has approved 10 copies, under Approval #0648–0175.

XII. Project Funding Priorities

A. Proposals for FY 1998 should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple institutions or persons are encouraged. The areas of special emphasis are listed below, but proposals in other areas will be considered on a funds-available basis.

In addition to referencing specific area(s) of special interest as listed below, proposals should state whether the research will apply to the Gulf of Mexico only, the South Atlantic only, or to both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS and to participate with NMFS in specific cooperative activities that will be determined by consultations between NMFS and successful applicants before project grants are awarded. All recipients of financial assistance under this program shall include funding in their applications for the principal investigator to participate in an annual MARFIN Conference in Tampa, FL, at the completion of the project.

1. Bycatch

The bycatch of biological organisms (including interactions with sea turtles and marine mammals) by various fishing gears can have wide-reaching impacts from a fisheries management and an ecological standpoint, with the following major concerns:

a. *Shrimp trawl fisheries*. Studies are needed to contribute to the regional shrimp trawler bycatch program (including the rock shrimp fishery) being conducted by NMFS in cooperation with state fisheries management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, Councils, and Commissions. Specific guidance and research requirements are contained in the Cooperative Bycatch Plan for the Southeast, available from NMFS (see **ADDRESSES**). In particular, the studies should address:

(1) Data collection and analyses to expand and update current bycatch estimates, temporally and spatially emphasizing areas of greatest impact by shrimping. Sampling effort should include estimates of numbers, weight, and random samples of size (age) structure of associated bycatch complex, with emphasis on those overfished species under the jurisdiction of the Councils.

(2) Assessment of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils. Other sources of fishing and nonfishing mortality should be considered and quantified as well.

(3) Identification, development, and evaluation of gear, non-gear, and tactical fishing options to reduce bycatch.

(4) Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

(5) Development and evaluation of statistical methods to estimate the bycatch of priority management species in the Gulf and South Atlantic shrimp trawl fisheries.

b. *Pelagic longline fisheries*. Several pelagic longline fisheries exist in the Gulf and South Atlantic, targeting highly migratory species, such as tunas, sharks, billfish, and swordfish. Priority areas include:

(1) Development and evaluation of gear and fishing tactics to minimize bycatch of undersized and unwanted species, including sea turtles, marine mammals, and overfished finfish species/stocks.

(2) Assessment of the biological impact of longline bycatch on related fisheries.

c. *Reef fish fisheries*. The reef fish complex is exploited by a variety of fishing gear and tactics. The following research on bycatch of reef fish species is needed:

(1) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(2) Characterization and assessment of the impact of bycatch of undersized target species, including release mortality, during recreational fishing and during commercial longline, bandit gear and trap fishing.

d. *Finfish trawl fisheries*. Studies are needed on quantification and qualification of the bycatch in finfish trawl fisheries, such as the flounder and fly-net fisheries in the South Atlantic.

e. *Gillnet fisheries*. Studies are needed on quantification and qualification of the bycatch in coastal and shelf gillnet fisheries for sciaenids, scombrids, bluefish and other dogfish sharks of the South Atlantic and Gulf of Mexico (particularly interaction with sea turtles and marine mammals).

f. *Economic considerations of bycatch reduction*.

(1) Develop and test models, using actual or hypothesized data, that explicitly consider the costs to the directed fishery and gains to the bycatch fishery. The models should include the effects of the management systems for the directed and bycatch fisheries and should attempt to describe criteria for the correct level of bycatch reduction (e.g., marginal cost and value of reduction are equal).

(2) Develop economic incentives and other innovative alternatives to gear and season/area restrictions as ways to reduce bycatch. The proposal should attempt to contrast the relative costs, potential gains, and levels of bycatch reduction associated with traditional methods and any innovative alternatives addressed by the proposals.

2. Reef Fish

Some species within the reef fish complex are showing signs of being overfished, either because of directed efforts or because of being the bycatch of other fisheries. The ecology of reef fish makes them vulnerable to overfishing, because they tend to concentrate over specific types of habitat with patchy distribution. This behavior pattern can make traditional fishery statistics misleading. Priority research areas include:

a. *Collection of basic biological data for species in commercially and recreationally important fisheries*. (1) *Age and growth of reef fish*. (a) Description of age and growth patterns, especially for red, vermilion, gray, and cubera snappers; gray triggerfish; gag; black grouper; spottail pinfish; hogfish; red porgy; and other less dominant forms in the management units for which data are lacking.

(b) Contributions to the development of annual age-length keys and description of age structures for exploited populations for all species in the complex addressed in the Reef Fish and Snapper/Grouper Management Plans for the Gulf and South Atlantic, respectively, prioritized by importance in the total catch.

(c) Design of sampling systems to provide a production-style aging program for the reef fish fishery. Effective dockside sampling programs are needed over a wide geographic range, especially for groupers, to collect information on reproductive state, size, age, and sex.

(2) *Reproduction studies of reef fish*. (a) Maturity schedules, fecundity, and sex ratios of commercially and recreationally important reef fish, especially gray triggerfish, gag, and red porgy in the Gulf and South Atlantic.

(b) Studies of all species to characterize the actual reproductive contribution of females by age.

(c) Identification and characterization of spawning aggregations by species, area, size group and season. (d) Effects of fishing on changes of sex ratios for gag, red grouper, and scamp, and disruption of aggregations.

(e) Investigations of the reproductive biology of gag, red grouper and other grouper species.

(3) *Recruitment of reef fish*. (a) Source of recruitment in Gulf and South Atlantic waters, especially for snappers, groupers, and amberjacks.

(b) Annual estimation of the absolute or relative recruitment of juvenile gag, gray snapper, and lane snapper to estuarine habitats off the west coast of Florida and to similar estuarine nursery habitats along the South Atlantic Bight; development of an index of juvenile gag recruitment for the South Atlantic based on historical databases and/or field studies.

(c) The contribution of live-bottom habitat and habitat areas of particular concern (*Oculina* banks) off Fort Pierce, FL, to reef fish recruitment.

(4) *Stock structure of reef fish.* (a) Movement and migration patterns of commercially and recreationally valuable reef fish species, especially gag in the Gulf and South Atlantic and greater amberjack between the South Atlantic and Gulf.

(b) Biochemical/immunological and morphological/meristic techniques to allow field separation of lesser amberjack, almaco jack, and banded rudderfish from greater amberjack to facilitate accurate reporting of catch.

(c) Stock structure of wreckfish in the South Atlantic and of greater amberjack in the Gulf and South Atlantic.

b. *Population assessment of reef fish.* (1) Effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

(2) Source and quantification of natural and human-induced mortalities, including release mortality estimates for charter boats, headboats, and private recreational vessels, especially for red snapper and the grouper complex.

(3) Determination of the habitat and limiting factors for important reef fish resources in the Gulf and South Atlantic.

(4) Description of habitat and fish populations in the deep reef community and the prey distributions supporting the community.

(5) Development of statistically valid indices of abundance for important reef fish species in the South Atlantic and Gulf, especially red grouper, jewfish, and Nassau grouper.

(6) Assessment of tag performance on reef fish species, primarily snappers and groupers. Characteristics examined should include shedding rate, effects on growth and survival, and ultimately, the effects of these characteristics on estimations of vital population parameters.

(7) Stock assessments to establish the status of major recreational and commercial species. Innovative methods are needed for stock assessments of aggregate species, including the effect of fishing on genetic structure and the incorporation of sex change for protogynous hermaphrodites into stock assessment models.

(8) Assessment of Florida Bay recovery actions on reef fish recruitment and survival.

c. *Management of reef fish.* (1) Research in direct support of management, including catch-and-release mortalities, by gear and depth.

(2) Evaluation of the use of marine reserves as an alternative or supplement to current fishery management practices and measures for reef fish. Studies should focus on the Experimental Oculina Reef Reserve, the Florida Keys National Marine Sanctuary, as well as on the identification of prime sites for the establishment of reserves in the U.S. south Atlantic and Gulf of Mexico.

(3) Characterization and evaluation of biological impacts (e.g., changes in age or size structure of reef fish populations in response to management strategies).

(4) Evaluation of vessel log data for monitoring the fishery and for providing biological, economic, and social information for management; and methods for matching log data to Trip Information Program samples for indices of effort.

3. Coastal Migratory Pelagic Fisheries

The commercial and recreational demand for migratory coastal pelagics has led to overfishing for certain species, including some stocks of king and Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and may ultimately demand international management attention. Current high priorities include:

a. Recruitment indices for king and Spanish mackerel, cobia, dolphin, wahoo, and bluefish, primarily from fishery-independent data sources.

b. Assessment and management models for coastal pelagic resources that are dominated by single year classes, such as Spanish mackerel, dolphin, and bluefish.

c. Fishery-independent methods of assessing stock abundance of king and Spanish mackerel.

d. Release mortality data for all coastal pelagic species.

e. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length-frequency and life history information.

f. Information on populations of coastal pelagics overwintering off the Gulf of Mexico and the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida, especially concerning population size, age and movement patterns.

g. Development of a practical method for aging dolphin.

h. Basic biostatistics for cobia, dolphin, and wahoo to develop age-length keys and maturation schedules for stock assessments.

i. Impact of bag limits on total catch and landings of king and Spanish mackerel.

j. Demand and/or supply functions for the commercial king mackerel fisheries, including baseline cost and return data. Cooperative efforts that cover the entire Southeast and employ common methodologies for all geographic areas are strongly encouraged.

k. Sociological and anthropological surveys of coastal pelagic fisheries.

4. Groundfish and Estuarine Fishes

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database for assessments comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and life history is needed. General research needs are:

a. Red drum. (1) Size and age structure of the offshore adult stock in the Gulf.

(2) Life history parameters and stock structure for the Gulf and the South Atlantic: Migratory patterns, long-term changes in abundance, growth rates, and age structure. Specific research needs for Atlantic red drum are estimates of fecundity as a function of length and weight and improved coastwide coverage for age-length keys.

(3) Catch-and-release mortality rates from inshore and nearshore waters.

b. Life history and stock structure for weakfish, menhaden, spot, and croaker in the Gulf and the South Atlantic: Migratory patterns, long-term changes in abundance, growth rates, and age structure and comparisons of the inshore and offshore components of recreational and commercial fisheries.

c. Improved catch-and-effort statistics from recreational and commercial fisheries, including development of age-length keys for size and age structure of the catch, to develop production models.

5. General

There are many other areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and better conservation. Examples of high-priority research needs include—

a. Identification of fishing communities, characterization of community dependance upon fishery resources and demographics of the families dependent on fishing or fishing related businesses.

b. Development of improved methods and procedures for transferring technology and educating constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introduction of conservation gear.

c. Compilation of baseline socio-demographic data for describing the social and cultural framework of managed fisheries.

d. Design and evaluation of innovative approaches to fishery management with special attention given to those approaches that control access to specific fisheries.

e. Social, cultural, and /or economic aspects of establishing fishery reserves. Studies should employ surveys or other accepted data collection methods and should include consumptive users, non-consumptive users, and persons not dependent on use of marine resources. Various management alternatives should be considered in the studies, e.g., exclude all users, exclude all consumptive users, size of reserve, anchoring rules, or any other relevant management tools.

f. Full development of non-Individual Transferable Quota (ITQ) methods to limit fishery effort and participation. Examples could include allocation of overall effort, annual number of trips or any other methods to control effort. The economic and biological effects, including consideration of bycatch levels, should be investigated and contrasted with expected outcomes under ITQ methods. Recreational, as well as commercial effort control methods, may be investigated.

g. Estimation of demand models for recretional fishing trips when the target species include a single species, an aggregate of related species, or all species combined. Studies using new data from the Southeast economics add-on to Marine Recreational Fisheries Statistics Survey are highly encouraged.

h. Sociocultural survey of commercial fishing in the Florida Keys. Proposals should address all fishing enterprises including potential sociocultural effects of large marine reserves in the Tortugas area.

B. Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through short- and long-term research efforts, with consideration given to the magnitude of the eventual economic benefits that may be realized.

XIII. Evaluation Criteria

Successful applicants generally will be recommended within 210 days from the date of publication of this notice. The earliest start date of awards will be about 90 days after each project is selected and after all NMFS/applicant negotiations of cooperative activities have been completed (the earliest start date of awards will be about 300 days after the date of publication of this notice). Applicants should consider this selection and processing time in developing requested start dates for their applications. Proposed projects will be evaluated and ranked as follows:

A. Unless otherwise specified by statute, in reviewing applications for cooperative agreements, including those that include consultants and contracts, NOAA will make a determination regarding the following:

1. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

2. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

3. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

4. Is the project proposal substantial in character and design?

B. Applications meeting the above requirements will be forwarded for technical evaluation. Applicants submitting applications not meeting the above requirements will be notified. Evaluations normally will involve experts from non-NOAA as well as NOAA organizations. Comments submitted to NMFS by each evaluator will be taken into consideration in the ranking of projects. NMFS will provide point scores on proposals, based on the following evaluation criteria:

1. Does the proposal have a clearly stated goal(s) with associated objectives that meet the needs outlined in the Project Narrative? (30 points)

2. Does the proposal clearly identify and describe, in the Project Outline and Statement of Work, scientifically valid methodologies and analytical procedures that will adequately address project goals and objectives? (30 points)

3. Do the principal investigators provide a scientifically realistic timetable to enable full accomplishment of all aspects of the Statements of Work? (20 points)

4. Do the principal investigators define how they will maintain stewardship of the project performance, finances, cooperative relationships, and reporting requirements for the proposal? (10 points)

5. Are the proposed costs appropriate for the scope of work proposed? (10 points)

XIV. Selection Procedures

All applications will be ranked by a NMFS scientific panel into two groups: ''Recommended,'' and ''Not Recommended.'' Proposals ranked as ''Not Recommended'' will not be given further consideration for selection and funding. ''Recommended'' rankings will be presented to a panel of non-NOAA fishery experts who will individually consider the significance of the problem addressed in each project proposal, the technical evaluation, and need for funding. These panel members will provide individual recommendations to NMFS on each proposal classified as ''Recommended.''

The non-NOAA panel members' individual comments, recommendations and evaluations, and recommendations of the NMFS scientific panel and NMFS Southeast Program Officer will be considered by the Regional Administrator, Southeast Region, NMFS (Regional Administrator). The Regional Administrator, in consultation with the Assistant Administrator for Fisheries, will (a) Determine which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, (b) select the projects to be funded, (c) determine the amount of funds available for each project, and (d) determine which components of the selected projects shall be funded. The exact amount of funds awarded, the final scope of activities, the project duration, and specific NMFS cooperative involvement with the activities of each project will be determined in pre-award negotiations between the applicant, the NOAA Grants Office, and the NMFS Program Staff. Projects must not be initiated by recipients until a signed award is received from the NOAA Grants Office.

NMFS will make project applications available for review as follows:

A. *Consultation with members of the fishing industry, management agencies,* *environmental organizations, and academic institutions.* NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations, and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

B. *Consultation with Government agencies.* Applications will be reviewed by the NMFS Southeast Region Program Office in consultation with the NMFS Southeast Fisheries Science Center, including appropriate operations and laboratory personnel, the NOAA Grants Office and, as appropriate, DOC bureaus and other Federal agencies.

XV. Other Requirements

A. *Federal policies and procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards. Women and minority individuals and groups are encouraged to submit applications under this program.

B. *Past performance.* Any first-time applicant for Federal grant funds is subject to a pre-award accounting survey prior to execution of the award. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

C. *Pre-award activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

D. *No obligation of future funding.* If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

E. *Delinquent Federal debts.* No award of Federal funds shall be made to an applicant or to its subrecipients who have any outstanding delinquent Federal debt or fine until either:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DOC are made.

F. *Name check review.* All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Potential non-profit and for-profit recipients may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

G. *Primary applicant certifications.* All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. *Nonprocurement debarment and suspension.* Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;
2. *Drug-free workplace.* Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;
3. *Anti-lobbying.* Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, contracts for more than $100,000, loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and
4. *Anti-lobbying disclosures.* Any applicant who has paid or will pay for lobbying using any funds must submit a Form SL-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

H. *Lower tier certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. A form SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

I. *False statements.* A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

J. *Intergovernmental review.* Applications under this program are subject to the provisions of E.O. 12372, ''Intergovernmental Review of Federal Programs.''

K. *Requirement to buy American-made equipment and products.* Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Federal participation under the MARFIN Program may include the assignment of DOC scientific personnel and equipment.

Reasonable, negotiated financial compensation will be provided under awards for the work of eligible grantee workers.

Information-collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB control number 0648–0175) under the provisions of the Paperwork Reduction Act.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Public reporting burden for agency-specific collection-of-information elements, exclusive of requirements specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**).

Authority: 15 U.S.C. 713c–3(d).

Dated: December 22, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–289 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123197A]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will have a joint Dogfish Committee meeting together with their respective industry advisors.

DATES: The meeting will be held on Thursday, January 22, 1998, from 10:00 a.m. until 4:00 p.m.

ADDRESSES: The meeting will be held at the Westin Suites (previously Doubletree), 4101 Island Avenue, Philadelphia, PA 19153; telephone: 215–365–6600.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: Agenda items include: Review fishery management plan development schedule/progress, overview of biology and fisheries for spiny dogfish, review of status of spiny dogfish stock, summary of scoping hearing comments, discussion of possible management measures, discussion of possible control date, and establishment of a plan development team.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 31, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–320 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123197B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Coastal Pelagic Species Plan Advisory Subpanel will hold a public meeting.

DATES: The meeting will be held on Tuesday, January 20, 1998, at 10:00 a.m. and may go into the evening until business for the day is completed.

ADDRESSES: The meeting will be California Department of Fish and Game office, 330 Golden Shore, Suite 50, Long Beach, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Doyle Hanan, telephone: (619) 546–7170; or Dr. Larry Jacobson, telephone: (619) 546–7117.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to convene the reconstituted subpanel, elect a chair, and discuss topics including limited entry, maximum sustainable yield control rules, and other matters related to the fishery management plan for coastal pelagic species currently under development.

Although other issues not contained in this agenda may come before this Subpanel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Subpanel action during this meeting. Subpanel action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 31, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–321 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–929–000]

Atlantic City Electric Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to Allegheny Power (Allegheny), and NESI Power Marketing, Inc. (NESI), under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreements be accepted to become effective on December 4, 1997.

Atlantic Electric states that a copy of the filing has been served on Allegheny and NESI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–336 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1033–000]

Automated Power Exchange, Inc.; Notice of Filing

December 31, 1997.

Take notice that on December 10, 1997, Automated Power Exchange, Inc., filed an Application for Disclaimer of Jurisdiction or, in the Alternative, Acceptance of an Initial Rate Filing and Waiver of Notice Requirements, Certain Filing Requirements and Annual Charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–348 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–937–000]

Carolina Power & Light Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Williams Energy Services Company. Service to the Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 97–342 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1586–003, et al.]

Citizens Utilities Company; Notice of Filing

December 31, 1997.

Take notice that on December 15, 1997, Citizens Utilities Company (Citizens), tendered for filing its Refund Compliance Report in Docket No. OA97–643–000, in compliance with tariff sheets conforming to Citizens' Order No. 888–A Settlement Agreement rates, and an amendment to the Company's March 28, 1997, filing of tariff changes in Docket No. ER97–2354, required under Article 3.2 of the Settlement Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–330 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1508–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

December 31, 1997.

Take notice that on December 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing proposed supplements to its Rate Schedules FERC No. 92 and FERC No. 96.

The proposed Supplement No. 10 to Rate Schedule FERC No. 96, applicable to electric delivery service furnished to public customers and non-public, economic development customers of the New York Power Authority (NYPA), is a copy of an electric rate settlement agreement approved by the New York Public Service Commission (NYPSC) applicable to public customer electric delivery service. The proposed Supplement No. 11 to Rate Schedule FERC No. 96 increases the rates and charges for public customer electric delivery service by $9,321,000 annually effective with the twelve month period ending March 31, 1998.

The proposed Supplement No. 6 to Rate Schedule FERC No. 92, applicable to electric deliver service to commercial and industrial economic development customers of the county of Westchester Public Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), is a copy of an electric rate settlement agreement approved by the NYPSC applicable to economic development delivery service.

These supplements would supersede proposed Supplement Nos. 10 and 11 to Rate Schedule FERC No. 96 and proposed Supplement No. 6 to Rate Schedule FERC No. 92 which Con

Edison tendered to the Commission on January 31, 1997. These supplements have never been made effective and should be deemed superseded upon grant of the relief requested in the present filing.

Con Edison seeks permission to make the rate increase to NYPA public customer service effective as of January 1, 1998.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–331 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–14–000]

Encogen Hawaii, L.P.; Notice of Amendment of Application for Determination of Exempt Wholesale Generator Status

December 31, 1997.

Take notice that on December 11, 1997, Encogen Hawaii, L.P., having its principal office at 1817 Wood Street, Suite #550 West, Dallas, TX 75201, filed with the Commission an amendment to its application for a Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Any person desiring to be heard concerning the amendment to the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 9, 1998, and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–329 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–8–000]

Enfield Energy Centre Limited; Notice of Amendment of Application for Determination of Exempt Wholesale Generator Status

December 31, 1997.

Take notice that on December 22, 1997, Enfield Energy Centre Limited, having its registered office at Cam Lea Offices, 975 Mollison Avenue, Enfield, Middlesex, EN3 7NN, England, filed with the Commission an amendment to its application for a Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Any person desiring to be heard concerning the amendment to the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 9, 1998, and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–328 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–7–000]

Enfield Operations L.L.C.; Notice of Amendment of Application for Determination of Exempt Wholesale Generator Status

December 31, 1997.

Take notice that on December 22, 1997, Enfield Operations L.L.C., having its registered office at Cam Lea Offices, 975 Mollison Avenue, Enfield Middlesex, EN3 7NN, England, filed with the Commission an amendment to its application for a Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Any person desiring to be heard concerning the amendment to the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 9, 1998, and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary .

[FR Doc. 98–327 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–933–000]

Kansas City Power & Light Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated December 1, 1997, between KCPL and LG&E Energy Marketing. KCPL proposes an effective date of December 1, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–338 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1090–000]

New England Power Pool; Notice of Filing

December 31, 1997.

Take notice that on December 11, 1997, the New England Power Pool (NEPOOL or POOL), Executive Committee filed a request for termination of membership in NEPOOL, with a retroactive date of December 1, 1997, of Houlton Water Company and Madison Electric Works (collectively, the Terminating Participants). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by each of the Terminating Participants. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of the Terminating Participants with a retroactive date of December 1, 1997, would relieve those entities, at their joint request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove the Terminating Participants from membership in the Pool. The Terminating Participants own no generation or transmission facilities in the New England Control Area and have received no energy related services from NEPOOL in December, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–349 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER90–1091–000]

New England Power Pool; Notice of Filing

December 31, 1997.

Take notice that on December 11, 1997, the New England Power Pool (NEPOOL or Pool) Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of February 1, 1998, of Working Assets Funding Service, Inc., (Working Assets). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Working Assets. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Working Assets with an effective date of February 1, 1998, would relieve Working Assets, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Working Assets from membership in the Pool. Working Assets owns no generation or transmission facilities in the New England Control Area.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–350 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1125–000]

Northeast Empire Limited Partnership # 2; Notice of Filing

December 31, 1997.

Take notice that on December 17, 1997, Northeast Empire Limited Partnership #2 (NELP#2), c/o Thomas D. Emero, Esq., Twenty South Street, P.O. Box 407, Bangor, Maine 04402–0407, a Delaware corporation, petitioned the Commission for an order accepting rate schedule for filing and granting waivers and blanket approvals.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–352 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–943–000]

Northeast Utilities Service Company; Notice of Filing

December 31, 1997.

Take notice that on December 5, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the Potomac Electric Power Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Potomac Electric Power Company.

NUSCO requests that the Service Agreement become effective December 4, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–346 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–925–000]

Northern Indiana Public Service Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Tenaska Power Services Co.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Tenaska Power Services Co., pursuant to the Transmission Service Tariff by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of December 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–334 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–160–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

December 31, 1997.

Take notice that on December 24, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP98–160–000, pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to upgrade an existing delivery point located in Hanson County, South Dakota for natural gas deliveries to Northwestern Public Service Company (NWPS) authorized in blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to upgrade its Alexandria #1 town border station to accommodate increased interruptible transportation deliveries to NWPS. The upgrade includes the replacement of the existing meter run with a new dual meter run all in the existing Alexandria #1 TBS yard. Northern states that the incremental volumes proposed to be delivered to NWPS at this delivery point will be 125 MMBtu on a peak day and 6,588 MMBtu on an annual basis. Northern further states that the estimated cost to upgrade the delivery point would be $6,400.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 96–325 Filed 1–6–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–935–000]

Northern States Power Company, (Minnesota Company), and Northern States Power Company (Wisconsin Company); Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Continental Energy Services

L.L.C. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff Original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on November 12, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–340 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–936–000]

Northern States Power Company (Minnesota Company); Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Cinergy Services, Inc.

NSP requests that the Commission accept both the agreements effective November 17, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–341 Filed 1–6–98 ; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–159–000]

Phelps Dodge Corporation, Complainant, v. El Paso Natural Gas Company, Respondent; Notice of Complaint

December 31, 1997.

Take notice that on December 23, 1997, Phelps Dodge Corporation (PDC), 2600 North Central Avenue, Phoenix, Arizona 85004, filed a complaint in Docket No. CP98–159–000 pursuant to Section 5 of the Natural Gas Act (NGA) and Rule 206 of the Commission's Rules of Practice and Procedure. PDC has filed this complaint requesting that the Commission require El Paso Natural Gas Company (El Paso) to comply with the terms and conditions of a transportation service agreement which is subject to the Commission's jurisdiction under the NGA, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Specifically, PDC complains that contrary to the express language of the service agreement, El Paso has refused to allow PDC to add new delivery points to provide firm transportation service at a PDC facility not previously served by El Paso. According to PDC, El Paso's refusal to serve PDC is not based on any physical or operational system capacity constraint, since there is an excess transportation capacity on El Paso's system. Instead, PDC believes that El Paso's refusal is based on an after-the-fact realization that honoring contractual commitments agreed to in a recent comprehensive rate settlement would not result in any additional revenue for El Paso in a post-settlement environment.

Any person desiring to be heard or to make a protest with reference to this complaint should on or before January 30, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before January 30, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–324 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–938–000]

Portland General Electric Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective November 18, 1997.

A copy of this filing was caused to be served upon Enron Power Marketing, Inc., as noted in the filing letter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–343 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–939–000]

Portland General Electric Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service with IGI Resources.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective November 18, 1997.

A copy of this filing was caused to be served upon IGI Resources as noted in the filing letter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–344 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–940–000]

Portland General Electric Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service with PacifiCorp.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective November 18, 1997.

A copy of this filing was caused to be served upon PacifiCorp as noted in the filing letter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–345 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4422–000]

PSI Energy, Inc.; Notice of Filing

December 31, 1997.

Take notice that on December 19, 1997, as supplemented on December 24, 1997, Cinergy Services, Inc., on behalf of PSI Energy, Inc., filed a response to an earlier deficiency letter from the Office of Electric Power Regulation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–332 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–934–000]

Rochester Gas and Electric Corporation; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the AIG Trading Corporation (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Tariff, Original Volume No. 3 (Market-Based Rate Tariff) accepted by the Commission in Docket No. ER97–3553–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 12, 1997, for the AIG Trading Corporation Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–339 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–924–000]

Southern California Edison Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Southern California Edison Company (Edison), tendered for filing the Authorized Representatives' Procedures For Post-Restructuring Operations And Accounting (Procedures), and a Notice of Cancellation of various rate schedules with the City of Banning. The Procedures address issues relating to the operation of the Independent System Operator (ISO) and Power Exchange.

To the extent necessary, Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign to the Procedures an effective date concurrent with the date the ISO assumes operational control of Edison's transmission facilities, which is expected to be January 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–333 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–926–000]

Southern California Edison Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, Southern California Edison Company (Edison), tendered for filing the Authorized Representatives' Procedures For Post-Restructuring Operations And Accounting (Procedures), and a Notice of Cancellation of various rate schedules with the City of Azusa. The Procedures address issues relating to the operation of the Independent System Operator (ISO) and Power Exchange.

To the extent necessary, Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign to the Procedures an effective date concurrent with the date the ISO assumes operational control of Edison's transmission facilities, which is expected to be January 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–335 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1096–000]

Southern Company Services, Inc.; Notice of Filing

December 31, 1997.

Take notice that on December 15, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Company), submitted revised transmission service and ancillary service rates for use under its Open Access Transmission Tariff. Southern Company proposes to adopt a formula rate to develop charges for firm and non-firm point-to-point transmission service and the annual transmission revenue requirement for network integration transmission service. Southern Company also proposes to adopt revised rates for each of the six ancillary services made available under its Tariff.

Southern Company requests that the Commission consolidate Docket Nos. ER94–1348–000, ER95–1468–000, OA96–27–000 and this proceeding. Southern Company also suggests a possible resolution of these pending proceedings. Finally, Southern Company requests an effective date for its filing of January 1, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 13, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–351 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1149–000]

Southern Energy Retail Trading and Marketing, Inc.; Notice of Filing

December 31, 1997.

Take notice that on December 19, 1997, Southern Energy Retail Trading and Marketing, Inc. (SERTM), filed an application requesting acceptance of its proposed Market Rate Tariff, waiver of certain regulations, and blanket approvals. The proposed tariff would authorize SERTM to engage in wholesale sales of capacity and energy to eligible customers at market-based rates as a power marketer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–353 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Fedeal Energy Regulatory Commission

[Docket No. CP98–161–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

December 31, 1997.

Take notice that on December 24, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP98–161–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point for Lederle Laboratories (Lederle), under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to install a new delivery point on its system at approximate Mile Post 329–1+7.8, in Bergen County, New Jersey, to provide deliveries of up to 10,800 Dekatherms of natural gas per day to Lederle. Tennessee states that to establish this delivery point, it will install a four-inch hot tap assembly, approximately 150 feet of four-inch-diameter interconnecting pipe and electronic gas measurement equipment on its existing right-of-way. Tennessee states that Douglas Pipeline Company (Douglas), on Lederle's behalf, will install the measurement facility on a site adjacent to Tennessee's existing right-of-way. Tennessee states that Douglas will reimburse Tennessee on Lederle's behalf for the cost of this project which is approximately $82,900.

Tennessee states that volumes delivered to Lederle after the construction of the delivery point will not exceed the total volumes authorized prior to the request, and that the construction of this delivery point is not prohibited by Tennessee's existing tariff. In addition, Tennessee states that it has sufficient capacity to accomplish deliveries at the proposed point without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–326 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–932–000]

The Washington Water Power Company; Notice of Filing

December 31, 1997.

Take notice that on December 4, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with ConAgra Energy Services, Inc., and Engage Energy US, LP. WWP requests the Service Agreements to be given effective dates of December 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–337 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

December 31, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project Use of Project Lands and Waters.

b. *Project No.:* 1494–151.

c. *Date Filed:* November 5, 1997.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The proposed facilities would be located on Gray's Hollow on Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Jon Cofrancesco, (202) 219–0079.

j. *Comment Date:* February 18, 1998.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to permit Harry Cole, d/b/a Dripping Springs to install a floating, covered boat dock, containing 21 slips in conjunction with 6 existing, floating, private boat docks, including a fuel dock and some covered docks, with a total of 24 slips. The existing and proposed docks would be used as a commercial facility to serve the patrons of Dripping Springs.

1. *This notice also consists of the following standard paragraphs: B, C1, and D2.*

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–354 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

December 31, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Action: Proceeding Pursuant to Reserved Authority to Determine Whether Modifications to License are Appropriate.

b. Project No.: 7481–068.

c. License Issued: October 13, 1987.

d. Licensee: NYSD Ltd. Partnership.

e. Name of Project: New York State Dam Hydroelectric Project.

f. Location: Mohawk River, Albany County, New York.

g. Authorization: Article 15 of the project license.

Licensee Contact: Mr. Steve Jackovski, Adirondack Hydro Development Corporation, 39 Hudson Falls Road, South Glens Falls, NY 12803, (518) 747–0930.

i. FERC Contact: Timothy Welch, (202) 219–2666.

J. Comment Date: February 18, 1998.

k. Description of proceeding: The Commission has initiated a proceeding to determine if reserved authority under article 15 of the project license should be used to require expanded operation of a fishway. The proceeding is in response to concerns raised by the U.S. Fish and Wildlife Service (FWS) regarding the impacts of project-induced turbine mortality on downstream migrating adult blueback herring. The FWS believes that the fishway should be operated from June through August, during the adult blueback herring out migration period. The fishway is currently operated from August through September for protection of downstream migrating juvenile blueback herring.

On June 14, 1996, the Commission issued a Draft Environmental Assessment (DEA) analyzing the environmental impacts of operating the existing fishway for downstream migrating adult blueback herring. Copies of the DEA can be obtained by contacting the Commission's Public Reference Room at (202) 208–1371.

1. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–355 Filed 1–6–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30445; FRL–5761–3]

Receipt of an Application to Amend a Microbial Pesticide Product's Composition Via Recombinant DNA Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to amend a *Bacillus thuringiensis* subspecies *kurstaki* EG7841 product by using a modified construct of this active ingredient during commercial production. The Agency has determined that this amendment application may be of regional and national significance. Therefore, the Agency is soliciting public comments on this amendment application.

DATES: Written comments must be submitted to EPA by February 6, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under the SUPPLEMENTARY INFORMATION unit of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Notice of receipt of this amendment application does not imply a decision by the Agency on this application.

An application to amend CRYMAX Bioinsecticide (EPA Reg. No. 55638–34) was received from Ecogen, Inc., 2005 Cabot Boulevard West, Langhorne, PA 19047–3023. The proposed amendment involves modifying the *Bacillus thuringiensis* subspecies *kurstaki* EG7841 product by using a modified construct of the active ingredient during commercial production. The cry gene carried by the recombinant plasmid in EG7841 was modified by site-directed mutagenesis to incorporate a single amino acid substitution in its encoded cry protein. Following review of this amendment and any comments received in response to this notice, EPA may approve the amendment, ask for additional data prior to making a regulatory decision, or deny the application.

The official record for this notice, as well as the public version, has been established for this document under docket control number ''OPP–30445'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–30445.'' Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Genetically engineered microbial pesticides.

Dated: December 24, 1997.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–361 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

Proposed Administrative Order on Consent; Portland Cement Site, Salt Lake County, UT

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Proposed Landowner and Prospective Purchaser Settlements.

SUMMARY: Notice is hereby given of two proposed Settlement Agreements under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, and the inherent authority of the Attorney General of the United States concerning the Portland Cement Site in Salt Lake County, Utah (the ''Site''). The first proposed Settlement Agreement requires the settling party, the Horman Family Trust to pay $45,000 to resolve certain claims of the United States Environmental Protection Agency (''EPA'') in connection with the remediation of the Site and $5,000 to the United States Department of Interior (''DOI'') to resolve certain claims for natural resources affected by contamination at the Site. In addition, the Horman Family Trust will implement specific institutional controls to assure that remediation performed at the Site is effective and permanent. The second proposed Settlement Agreement requires the settling party, Redwood Development, LLC., to pay $45,000 to resolve certain claims of the United States Environmental Protection Agency (''EPA'') in connection with the remediation of the Site and $5,000 to the United States Department of Interior (''DOI'') to resolve certain claims for damages to natural resources affected by contamination at the Site. In addition Redwood Development, LLC. will implement specific institutional controls to assure that remediation performed at the Site is effective and permanent.

DATES: Comments must be submitted to EPA on or before February 6, 1998.

ADDRESSES: Comments should be addressed to Matthew Cohn, (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should refer to: In the Matter of: Portland Cement-Horman-Redwood Settlement Agreements.

FOR FURTHER INFORMATION CONTACT: Matthew Cohn, (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6853.

SUPPLEMENTARY INFORMATION: Copies of the proposed Settlement Agreements may be obtained in person or by mail from Sharon Abendschan, Enforcement Specialist (ENF–T), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6957.

Dated: December 18, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 98–110 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5947–7]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; in Re: Gaynor Stafford Industries Superfund Site; Stafford, CT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of C & C Industrial, L.L.C., for injunctive relief and for costs incurred or to be incurred by EPA in conducting response actions at the Gaynor Stafford Industries Superfund Site in Stafford, Connecticut.

DATES: Comments must be provided on or before February 6, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: C & C Industrial, L.L.C., U.S. EPA Docket No. CERCLA–I–97–1096.

FOR FURTHER INFORMATION CONTACT: Audrey Zucker, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode SES, Boston, Massachusetts 02203, (617) 565–3444.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given of a proposed prospective purchaser agreement concerning the Gaynor Stafford Industries Superfund Site in Stafford, Connecticut. The settlement was approved by EPA Region I on November 15, 1997, and by the U.S. Department of Justice on December 8, 1997, subject to review by the public pursuant to this Notice. C & C Industrial, L.L.C. has executed a signature page committing it to participate in the settlement. Under the proposed settlement, the Setting Respondent is required to pay $30,000 to the Hazardous Substances Superfund and to provide access to the property. In exchange, the Settling Respondent is granted a covenant not to sue under CERCLA and protection from contribution actions or claims under CERCLA with respect to the existing contamination at the site. EPA believes the settlement is fair and in the public interest.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Audrey Zucker, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode SES, Boston, Massachusetts 02203, (617) 565–3444.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RAA, Boston, Massachusetts 02203 (U.S. EPA Docket No. CERCLA–I–97–1096).

Dated: December 12, 1997.

John P. DeVillars,

Regional Administrator.

[FR Doc. 98–356 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5946–1]

Proposed Administrative Order on Consent; Reclaim Barrel Site, Salt Lake County, UT

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Proposed Section 122(g)(4) De Minimis Settlements.

SUMMARY: In accordance with the requirements of Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given of a proposed *de minimis* settlement agreement under Section 122(g)(4), 42 U.S.C. 9622(g)(4), concerning the Reclaim Barrel Site in Salt Lake County, Utah (the ''Site''). The proposed Administrative Order on Consent (AOC) requires the settling party, Western Dairymen Cooperative, Incorporated to pay a total of $1,104 to resolve its liability for response costs incurred and to be incurred by the United States Environmental Protection Agency (''EPA'') in connection with the remediation of the Reclaim Barrel Site.

DATES: Comments must be submitted to EPA on or before February 6, 1998.

ADDRESSES: Comments should be addressed to Matthew Cohn, (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should refer to: In the Matter of: Reclaim Barrel Site Administrative Settlement Agreement.

FOR FURTHER INFORMATION CONTACT: Matthew Cohn, (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6853.

SUPPLEMENTARY INFORMATION: Notice of Section 122(g)(4), 42 U.S.C. 9622(g)(4), Administrative Order on Consent *De Minimis* Settlement: In accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), notice is hereby given that the terms of an Administrative Orders on Consent (AOC) for a *de minimis* settlement has been agreed to by the settling party, Western Dairymen Cooperative, Incorporated.

By the terms of the proposed AOC, Western Dairymen Cooperative, Incorporated will pay $1,104 to the EPA Hazardous Substance Superfund. In exchange for payment, as provided for by CERCLA, the settling party will receive a covenant not to sue for liability under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and contribution protection under Section 122(g) of CERCLA, 42 U.S.C. 9622(g).

The amount that will paid is directly related to the amount of hazardous substances that Western Dairymen Cooperative, Incorporated contributed to the Site, including a premium payment related to future response costs.

U.S. EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed administrative *de minimis* settlement agreement.

A copy of the proposed AOC may be obtained in person or by mail from Sharon Abendschan, Enforcement Specialist (ENF–T), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6957.

Dated: December 18, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 98–106 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5947–1]

Revised Draft National Pollutant Discharge Elimination System (NPDES) General Permits for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

AGENCY: Environmental Protection Agency.

ACTION: Notice of Revised Draft (NPDES) General Permit Reissuance, Notice to States of Mississippi, Alabama and Florida for Consistency Review with approved Coastal Management Programs.

SUMMARY: The Regional Administrator (RA) of EPA Region 4 (the ''Region'') is today proposing to revise in part Draft National Pollutant Discharge Elimination System (NPDES) general permits for the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GMG280000), published at 61 FR 64876 on December 9, 1996 for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The existing permit, jointly issued by Regions 4 and 6 and published at 51 FR 24897 on July 9, 1986, authorizes discharges from exploration, development, and production facilities located in and discharging to all Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas. Region 6 issued a final permit (General Permit No. GMG290000) for the Western portion of the OCS of the Gulf of Mexico, published at 57 FR 54642 on November 19, 1992 for facilities in Federal waters seaward of Louisiana and Texas Waters. Today's version extends permit coverage to the Central Planning Area, except specified areas of the Central Planning Area which are designated as Areas of Biological Concern. Today's proposed revised draft NPDES permits cover existing and new source facilities in the Eastern Planning Area (Alternative B of the Environmental Impact Statement (EIS)) with operations on Federal leases occurring in water depths seaward of 200 meters, occurring offshore the coasts of Florida and Alabama, and existing and new source facilities in the Central Planning Area (Alternative A of the EIS), with operations located in and discharging pollutants to federal waters in lease blocks located seaward of the outer boundary of the territorial seas offshore Mississippi and Alabama. The western boundary of the coverage area is demarcated by Mobile and Viosca Knoll leases located seaward of the outer boundary of the territorial seas from the coasts of Mississippi and Alabama in the Central Planning Area; except specific areas in the Central Planning Area which may be designated by EPA as Areas of Biological Concern (See Fact Sheet and Draft Environmental Impact Statement). The eastern boundary of the coverage area is demarcated by the Vernon Basin leases north of the 26° parallel and in water depths seaward of 200 meters.

All permittees holding leases on which a discharge has taken place within 2 years of the effective dates of the new general permits (operating facilities) in these areas must file a written notice of intent to be covered by either the new general permit for existing sources or the new general permit for new sources within 60 days after publication of the final determination on this action. Non-operational leases, *i.e.*, those on which no discharges have taken place in the 2 years prior to the effective date of the new general permits, are not eligible for coverage under either general permit, and their coverage under the old general permit will terminate on the effective date of the new general permits. No NOI's will be accepted on non-operational or newly acquired leases until such time as an exploration plan or development production plan has been prepared for submission to EPA. The notice of intent must contain the information set forth in 40 CFR 122.28(b)(2)(ii) and Section A.4 of the NPDES permit. In accordance with Oil and Gas Extraction Point Source Category; Offshore Subcategory Effluent Guidelines and New Source Performance Standards published at 58 FR 12454 on March 4, 1993, EPA Region 4 is making an Environmental Impact Statement (EIS) available concurrently with the general permits for review during the public comment period that addresses potential impacts from facilities that may be defined as new sources in the context of a comprehensive offshore permitting strategy. As set forth in Section 2.4.2 of the EIS and information received, the Regional Administrator has determined that the area in the Eastern Planning Area shoreward of the 200 meter depth and certain designated areas in the Central Planning Area includes extensive live bottom and other valuable marine habitats and includes areas of biological concern, which should be subject to more stringent review based on the ocean discharge criteria under Section 403 of the Clean Water Act (CWA) and findings of the EIS. Accordingly, individual permits will be issued for operating facilities on lease blocks traversed by and shoreward of the 200 meter water depth in the Eastern Planning Area and certain designated areas of biological concern in the Central Planning Area. Owners or operators of those leases will be notified in writing that an individual permit is required. A brief statement of the reasons for this decision will be provided, together with an application form and a deadline for filing the application. If a timely application is received, general permit coverage will continue and shall automatically terminate on the date final action is taken on the individual NPDES permit application, in accordance with 40 CFR 122.28(b)(3)(ii). No application will be accepted for non-operational leases until such time as an exploration plan or development production plan has been prepared for submission to EPA. Owners of non-operational leases and operators who neither file a notice of intent nor an individual permit application will lose coverage under the old general permit on the effective date of the new general permits.

As proposed, these NPDES general permits include BPT, BCT, and BAT

limitations for existing sources and NSPS limitations for new sources as recently promulgated in the effluent guidelines for the offshore subcategory at 58 FR 12454 (March 4, 1993). The permits also address a decision of the Ninth Circuit Court of Appeals by establishing limits on cadmium and mercury and by removing references to Alternative Toxicity Requests. In addition, the permits delete references to the Diesel Pill Monitoring Program, incorporate a new limitation on garbage discharges consistent with the regulations of the U.S. Coast Guard, clarify the applicability of some of the permit's effluent limitations and reporting requirements, establish aquatic toxicity limitations for produced water, and include a reopener clause.

ADDRESSES: Persons wishing to comment upon or object to any aspects of this permit reissuance or wishing to request a public hearing, are invited to submit same in writing within forty-five (45) days of this notice to the Office of Environmental Assessment, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104, Attention: Ms. Lena Scott.

DATES: Comments on this proposed action must be received by February 23, 1998.

FOR FURTHER INFORMATION: Contact Mr. Roosevelt Childress, Chief, Surface Water Permits Section, telephone (404) 562–9279, or Mr. Larry Cole, Environmental Engineer, telephone (404) 562–9307 or the following address: Water Management Division, Surface Water Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

SUPPLEMENTAL INFORMATION:

Procedures for Reaching a Final Permit Decision

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the proposed revised NPDES general permits and the EIS received within the 45-day period will be considered in the formulation of final determinations regarding the permit reissuance. EPA will consider all written comments submitted pursuant to this notice of revised draft general permit, as well as all written comments submitted pursuant to the December 9, 1996 draft general permit and all comments received during the four (4) public hearings for the draft general permit.

After consideration of all written comments and the requirements and policies in the Act and appropriate regulations, the EPA Regional Administrator will make determinations regarding the permit reissuance. If the determinations are substantially unchanged from those announced by this notice, the Administrator will so notify all persons submitting written comments. If the determinations are substantially changed, the Administrator will issue a public notice indicating the revised determinations.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15 except for a general permit as cited at 40 CFR 124.71. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit. Additional information regarding these procedures is available by contacting Mr. David M. Moore, Office of Regional Counsel at (404) 562–9547.

Procedures for Obtaining General Permit Coverage

Notice of Intent (NOI) requirements for obtaining coverage for operating facilities under both permits are stated in Part I Section A.4 of the general permit. Coverage under the new general permit is effective upon receipt of notification of inclusion from the Director of the Water Management Division. EPA will act on the NOI within a reasonable period of time.

Exclusion of Non-Operational Leases

These permits do not apply to non-operational leases, i.e., those on which no discharge has taken place in the 2 years prior to the effective dates of the new general permit. EPA will not accept NOI's for such leases, and these general permits will not cover such leases. Non-operational leases will lose coverage under the old general permit on the effective date of the new general permits. No subsequent exploration, development or production activities may take place on these leases until and unless the lessee has obtained coverage under one of the new general permits or an individual permit. EPA will not accept NOI's or individual permit applications for non-operational or new acquired leases until such time as an exploration plan or development production plan has been prepared for submission to EPA.

The new permitting requirements for leases covered under the old general permits are summarized in Table 1.

TABLE 1.—NEW PERMITTING REQUIREMENTS FOR LEASES COVERED UNDER THE OLD GENERAL PERMIT

Lease location	Discharge status	Coverage requirements	Date old general permit expires	Type of permit coverage
Central Planning Area & Outside 200 meter Isobath in Eastern Planning Area.	(1) Operational	File an NOI within 60 days of effective date of new general permit.	Date EPA Notifies Lessee of New Coverage Decision.	New General Permit, except near an Area of Biological Concern.
	(2) Leases With Imminent Projects.	File NOI At Time Exploration Plan or Development Production Plan Exists.	Effective Date of New General Permit.	New General Permit, except near an Area of Biological Concern.
	(3) Non-Operational	No NOI will be accepted; Ineligible for General Permit Coverage.	Effective Date of New General Permit.	None.

TABLE 1.—NEW PERMITTING REQUIREMENTS FOR LEASES COVERED UNDER THE OLD GENERAL PERMIT—Continued

Lease location	Discharge status	Coverage requirements	Date old general permit expires	Type of permit coverage
Inside 200 meter Isobath in Eastern Planning Area & certain designated areas in the Central Planning Area.	(1) Operational	File an individual permit application within 120 days of effective date of new general permit.	Date EPA notifies lessee of Individual permit decision.	Individual Permit.
	(2) Lessees with Imminent Projects.	File an Individual Permit Application when Lessee has Exploration Plan or Development Production Plan.	Effective date of New General Permit.	Individual Permit.
	(3) Non-Operational	Ineligible For General Permit Coverage.	Effective Date of New General Permit.	None.

State Water Quality Certification

Because state waters are not included in the area covered by the OCS general permit, its effluent limitations and monitoring requirements are not subject to state water quality certification under CWA Section 401.

State Consistency Determination

This revised package will also serve as Region 4's requirement under the Coastal Zone Management Act (CZMA) to provide all necessary information for the States of Mississippi, Alabama and Florida to review this action for consistency with their approved Coastal Management Programs. A copy of the consistency determination on the proposed activities will be sent to each affected State, along with draft copies of the draft NPDES general permit, Fact Sheet, preliminary Ocean Discharge Criteria Evaluation, and final Environmental Impact Statement. Other relevant information is available upon request from each State for their review. Comments regarding State Consistency are invited in writing to the Office of Public Affairs, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104, Attention: Ms. Lena Scott.

Previous Public Hearings

Four (4) previous public hearings were held on the general permit in January and February of 1997. The hearings were held on January 28, 1997 in Gulfport, Mississippi, January 29, 1997 in Gulf Shores, Alabama, January 30, 1997 in Pensacola, Florida and February 4, 1997 in St. Petersburg, Florida. Comments received in these hearings will be used in the final determinations regarding permit reissuance.

Administrative Record

The proposed revised NPDES general permits, fact sheet, preliminary 403(c) determination, EIS and other relevant documents are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permits, fact sheet, preliminary 403(c) determination, EIS and other relevant documents may be obtained by writing the U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104, *Attention:* Ms. Lena Scott, or calling (404) 562–9607.

Robert F. McGhee,

Director, Water Management Division.

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Fact Sheet

I. Background Information Concerning General Permits and Proposed Individual Permits

Section 301(a) of the Clean Water Act (the ''Act'') provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. The Regional Administrator has determined, on the basis of the EIS and information received, that oil and gas facilities seaward of the 200 meter water depth in certain parts of the Eastern Planning Area and seaward of the outer boundary of the territorial seas in the Central Planning Areas described in the proposed NPDES general permits are more appropriately controlled by general permits rather than individual permits, 40 CFR 122.28(c). This determination covers both existing sources and new sources. Accordingly, two (2) NPDES general permits are being proposed: one covering existing sources and the second covering new sources. This decision is based on 40 CFR 122.28, 40 CFR 125 (Subpart M—Ocean Discharge Criteria), Environmental Impact Statement and the Agency's previous decisions in other areas of the Gulf of Mexico's Outer Continental Shelf (OCS). As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

In accordance with 40 CFR 122.28(a)(4)(iii), any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 40 CFR 122.21, with reasons supporting the request, to the Director, Water Management Division, Surface Water Permits Section, U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

A. Previous OCS NPDES General Permit

The Regional Administrator for EPA Region 4 is today proposing to reissue in part the National Pollutant Discharge Elimination System (NPDES) general permit for the Outer Continental Shelf of the Gulf of Mexico (General Permit No. GMG280000) under Region 4 jurisdiction. This previous permit, published at 51 FR 24897 (July 9, 1986), issued jointly for the Eastern and Western Gulf of Mexico by Regions 4 and 6, expired on July 1, 1991. Region 6 reissued a final existing permit for the Western Portion of the Outer Continental Shelf (General Permit No. GMG290000), published at 57 FR 54642 (November 19, 1992) with a modification published at 58 FR 63964 (December 3, 1993). Region 4, continued coverage under the previous OCS general permit to permittees that requested to be covered before the previous general permit expired on July 1, 1991. Region 4 proposed draft NPDES general permits for the Eastern Gulf of Mexico at 61 FR 64876 on December 9, 1996, regulating existing source and new source oil and gas OCS discharges. Today's proposed Eastern Gulf of Mexico OCS revised general permits regulate existing source and new source OCS discharges throughout the Gulf of Mexico for offshore areas under the jurisdiction of Region 4.

B. Discussion of Three (3) Alternatives Examined by the Environmental Impact Statement (EIS)

Since the promulgation of effluent guidelines and standards of performance for new sources at 58 FR 12454 (March 4, 1993), EPA regulations in 40 CFR 122.29(c) require that the issuance of an NPDES permit to a new source be subject to environmental review provisions of the National Environmental Policy Act (NEPA) as defined in 40 CFR Part 6, Subpart F. A Draft Environmental Impact Statement (EIS) has been prepared by EPA. The EIS examined three (3) alternatives for permitting exploration development and production phases of oil and gas activities. Alternative A: Issuing two general permits, one for existing sources and the other for new sources, that would cover the entire EPA Region 4 jurisdictional area except areas under moratorium. Alternative B: Issuing two general permits, one for existing sources and the other for new sources, that would only apply to locations seaward of the 200 meter isobath, and would exclude areas under moratorium. Alternative C: EPA would not issue NPDES general permits covering either existing sources or new sources and would handle all future oil and gas activities occurring in EPA Region 4 jurisdictional area by individual permits. Chapter 2 of the EIS should be reviewed for a discussion of these three (3) alternatives. Chapter 3 of the EIS discusses the affected environment and potential environmental consequences of the three (3) alternatives. EPA, Region 4, plans to issue shortly the final EIS.

C. Conclusions From EIS and Information Received on Biological Communities in the Coastal Shelf and Shelf-Break Zone

The EIS reviews available data and studies on discharges from oil and gas facilities and the potential for these discharges resulting in impacts to benthic communities of short and long term duration. The EIS concludes that because of the abundance and sensitivity of the biological resources present from 200 meters of depth and shallower and potential secondary impacts, individual permits for these areas which incorporate permit stipulations on a case-by-case review would be more protective of the numerous biological communities present in the 200 meter water depths or shallower, and help ensure compliance with Section 403(c) of the CWA. Because areas of biological concern are more abundant in water depths of 200 meters or shallower and potential for environmental impacts is greater, Region 4 chose alternative B as its preferred alternative as the permitting strategy for the Eastern Gulf of Mexico. This alternative would have required individual permits to be issued for activity occurring in water depths 200 meters of shallower, off the coasts of Mississippi, Alabama and Florida. Based on more complete information, Region 4 is adopting alternative A for the Eastern Gulf of Mexico's Central Planning Area, which provides for general permit coverage within the Central Planning Area, except in certain designated areas specifically excluded from NPDES general permit coverage identified as areas of biological concern. This approach allows for case-by-case review of impacts in waters 200 meters of depth and shallower in the Eastern Planning Area where less information is available for the assessment of impacts, and in areas of biological concern identified within the Central Planning Area where more complete information regarding environmental impacts are available. This strategy requires current or proposed oil and gas operations in the Eastern Planning Area shoreward of the 200 meter water depth and in certain designated areas of the Central Planning Area to seek individual existing source or new source permits, as appropriate.

D. Proposed Eastern Gulf of Mexico NPDES General Permits

These proposed draft Eastern Gulf of Mexico NPDES general permits authorize discharges from exploration, development, and production facilities (existing sources or new sources) discharging to Federal waters of the United States of the Gulf of Mexico. Region 4's coverage area for these general permits includes all discharges occurring in leases located seaward of the 200 meter water depth for offshore, Alabama and Florida in the Eastern Planning Area and discharges occurring seaward of the outer boundary of the territorial seas offshore Alabama and Mississippi in the Central Planning Area, as explained in Part I Section A(1) of the general permit. These permits do not cover areas included under Congressional or Presidential moratorium for oil and gas activities in Federal waters.

40 CFR 122.29 requires that separate permits be issued for new sources. Accordingly, two general permits will be issued for the area seaward of the 200 meter depth in the Eastern Planning Area and seaward of the outer boundary of the territorial seas in the Central Planning Area: one for new sources, and the other for existing sources. These

permits apply only to operating facilities; they do not apply to non-operational leases.

(1) New Source General Permit

The RA has determined, in accordance with 40 CFR 122.28(c), that the new source general permit will apply to all new sources, as that term is defined at 40 CFR 122.2 as ''any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which is commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such sources, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.''

If construction was commenced after March 4, 1993, the facility is a new source. Because drilling rigs are moved from site to site for several years and production platforms can be built on shore and transported to an offshore site, the actual construction of the equipment or facility can occur years before there is a discharge of pollutants from that equipment or facility at a particular site. Therefore, the definition of the ''construction'' of a new source must be addressed. The regulations at 40 CFR 122.29(b)(4) state:

''(4) Construction of a new source as defined under 122.2 has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new sources facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.''

EPA defines ''significant site preparation work'' as ''the process of clearing and preparing an area of the ocean floor for purposes of constructing or placing a development or production facility on or over the site'' (50 FR 34619). Therefore, development and production wells are new sources unless the site was cleared and prepared for the purposes of constructing or placing a development or production facility over that site before the promulgation of the effluent guideline for the offshore subcategory on March 4, 1993. Exploration activities are not considered significant site preparation work; therefore sites where exploration has occurred are not considered existing sources.

EPA regulations also define the term ''site'' at 40 CFR 122.2 as ''the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.'' EPA interprets the term ''water area'' to mean the ''specific geographical location where the exploration, development, or production activity is conducted, including the water column and ocean floor beneath activities.'' Thus, if a new platform is built at or moved from a different location, it will be considered a new source when placed at the new site where its oil and gas activities take place. Even if the platform is placed adjacent to an existing platform, the new platform will still be considered a ''new source'' occupying a ''new water'' area, and therefore, a ''new site'' (50 CFR 34618).

(2) Existing Source General Permit

All other facilities must obtain coverage under the existing source general permit. Existing sources are those facilities where significant site preparation work has occurred, or development and production activity has taken place, on or before March 4, 1993. These same facilities, however, would become new sources if they moved to a new water area to commence production or development activities. Exploratory activities require existing source general permit coverage.

(3) Application Procedures

Permittees holding leases with operating facilities seaward of the 200 water meter depth in the Eastern Planning Area and seaward of the outer boundary of the territorial seas in the Central Planning Area (except designated areas of Biological Concern) will be required to file a Notice of Intent, pursuant to 40 CFR 122.28(b)(2)(ii), to be covered by either the new source general permit or the existing source general permit, as applicable, within 60 days after publication of the final determination on this action. Such notice fulfills the permit application requirements under federal regulations. The permittee will be covered under the appropriate new general permit (existing or new source) upon receipt of notification of inclusion from the Director. A discharger having coverage under the old general permit who fails to timely submit such a notice is not authorized to discharge pursuant to 40 CFR 122.28(b)(2), and is no longer covered under the old general permit.

E. Proposed Individual Permits

All lease blocks with operating facilities traversed by or shoreward of the 200 meter isobath in the Eastern Planning Area and in designated areas of biological concern in the Central Planning Area (See Item G below for designated areas of biological concern and Appendix B for map showing area) will be required to apply for and obtain individual permits in order to discharge into U.S. waters. No individual permits will be issued for non-operational leases until an exploration plan or development production plan has been prepared for submission to EPA. As with the general permits, there are two kinds of individual permits that will be issued.

The first is an individual new source permit. The application requirements for new sources are set forth at 40 CFR 122.21(k) and (l). Prior to issuance of such permits, the law requires that an Environmental Impact Statement (EIS) or Environmental Assessment (EA) be prepared. In order to allow EPA to conduct that review, the applicant must submit information as set forth in 40 CFR 6.604(b).

F. Basis for Extending General Permit Coverage Into the Central Planning Area

Region 4, after review of more complete data, proposes to extend general permit coverage into the Central Planning Area. Based on current activity levels in the Central Planning Area (CPA), the Region believes the CPA has been extensively surveyed for the location of drilling and production sites and have been documented. Available scientific survey literature of the Mississippi-Alabama shelf notes the general lack of firm bottom substrate for attachment of bottom life, high water column turbidity in much of the east-central inner shelf, and a trend of increased water clarity and light penetration eastward (Vittor, 1985). The Area is not normally under the influence of the sub-tropical Loop Current that elsewhere stabilizes water temperature more suitable to increased epifaunal diversity. It has also been documented that the bottom area offshore Mississippi-Alabama experiences substantial deposition of fine particle sediments eminating from cover rivers (Rabalais and Boesch, 1987) that would tend to cover previously exposed hard substrate. Features that Region 4 is now defining as Areas of Biological Concern are pronounced in terms of topography and are fairly well discernable by survey. Brooks and Giammona found predominately soft sediments punctuated in some areas with rock outcrops and topographic (the pinnacle trend) high features. The Region has added a condition to the NOI requirements for applicants seeking general permit coverage to provide photodocumentation and geohazards surveys in order to allow approval of specific project sites in the Central Planning Area after this data is reviewed.

G. Description of Designated Areas of Biological Concern in the Central Planning Area

A. Southwest Rocks

Feature consists of two clusters of pitted shell and sandstone rock outcrops measuring 23–30 feet across and 5–11 feet across, rising 3–5 feet above the bottom. Feature includes a gently sloping ridge with 3–5 feet of relief. The feature is in water depths of 66–72 feet, approximately 10.5 miles south of Dauphin Island. Rocks bear epifaunal encrustation mainly of barnacles, serpulid worms and bryozoans. (Schroeder, 1988)

B. Southeast Banks

A rock rubble field consisting of irregularly shaped, pitted sandstone slabs up to 2.5 x 2.3 x 0.7 feet in size. Rocks have epifaunal encrustation. Feature includes two sites located in water depths of 70 to 87 feet, 17 miles south of the Ft. Morgan peninsula. (Schroeder, 1988)

C. 17 Fathom Hole

Feature is an uncharted, irregular bottom depression in 98–105 feet of water. It is composed of an assortment of irregularly-shaped rock rubble, shell and coarse sand. The feature is located approximately 23 miles south of the entrance to Mobile Bay. (Schroeder, 1988)

D. Pinnacle Trend

This feature occupies Viosca Knoll Lease Blocks 473–476, 521 and 522, 564–566, 609 and 610 within Region 4 jurisdiction. This is a series of topographic irregularities with variable biotic coverage along the Mississippi-Alabama shelf break, between the 40–80 meter depth contours. The feature contains a variety of structure including low-relief rocky structure to more dramatic pinnacle-shaped structures, ridges, scarps and relict patch reefs. The structure provides significant solid substrate for attachment by different invertebrate organisms that vary in number and diversity. (MMS, 1997)

The RA will then make and publish a determination as to whether the facility seeking a permit is a new source.

The second type of individual permit is for an existing source. Applicants shall submit the information required by 40 CFR 122.21(f), together with any additional information required to determine the appropriate permit limits based on ocean discharge criteria under § 403 of the CWA.

Permittees holding leases shoreward of the 200 meter depth in the Eastern Planning Area and in designated areas of biological concern in the Central Planning Area will be given individual notice of the requirement to apply for an individual permit, a brief statement of the reasons therefore, a copy of the application form, and a deadline for filing the application. No applications will be accepted for non-operational or newly acquired leases until such time as an exploration plan or development production plan has been prepared for submission to EPA. All permittees with operational facilities, *i.e.*, leases on which a discharge has taken place within 2 years of the effective date of the new general permits, who file a timely application will continue to be covered under the old general permit until a final action has been taken on the individual permit application.

H. Oil and Gas Activities in the Eastern Gulf of Mexico

Historically, activity in the Eastern Gulf of Mexico has been less than that in areas west of Region's 4 jurisdiction. This was partly due to the demand for natural gas and economics associated with drilling costs necessary to reach the deep Norphlet and other producible commercial formations. As the price and demand for natural gas increases, along with the development of deep water drilling and producing technology, exploration activities in this area will continue. In 1991, an EPA Region 4 survey of the major oil companies revealed that fifty (50) wells had been drilled in the eastern Gulf and 17 wells were producing. The producing wells were located either offshore Alabama and Mississippi, with no producing wells located in Federal waters offshore Florida. Additionally, the 1991 survey revealed that there are only three facilities discharging produced water. These facilities were located in the Mobile leasing area: one in Block 908 discharging approximately 2 barrels of produced water per day (BPD); one in Block 990 discharging approximately 160 BPD; and one in Block 821 discharging approximately 240 BPD. A map of the area revealed that these facilities are located in 15–20 meters of water. The survey revealed that there were no current producing wells seaward of water depths greater than 40 meters.

II. Description of Activity and Facilities Which Are Subject of Draft Permits

The Oil and Gas Extraction Point Source Category (40 CFR 435—Subpart A) includes facilities engaged in field exploration, development and well production and well treatment. Exploration facilities are fixed or mobile structures engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs. A development facility is any fixed or mobile structure engaged in the drilling and completion of productive wells, which may occur prior to, or simultaneously with production operations. Production Facilities are fixed or mobile structures engaged in well completion or used for active recovery of hydrocarbons from producing formations.

III. Nature of Discharges From Oil and Gas Operations and Effluent Limits

The proposed general permits will authorize the following discharges to occur in the previously delineated coverage area: drilling mud; drill cutting; produced water; well treatment fluids; workover fluids; completion fluids; deck drainage, sanitary wastes; domestic wastes, desalinization unit discharges, blowout preventer fluid; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; and mud, cuttings and cement at the seafloor. The proposed permits will authorize discharges from facilities engaged in field exploration, development and well production and well treatment, for offshore operations for both existing and new sources for leases in the Eastern Gulf of Mexico.

The effluent guidelines include Best Available Technology Economically Achievable (BAT) limitations for existing sources and New Source Performance Standards (NSPS) that are based on the best available demonstrated technology for new sources. New facilities have the opportunity to install the best and most efficient production processes and waste water treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible for implementation by new sources.

Upon its issuance in 1986, the existing general permit was judicially challenged by various parties in *Natural Resources Defense Council* v. *EPA,* 863 F.2d 1420 (9th Cir. 1988). Although the Court affirmed EPA's permit decisions on most of the issues litigated, the Court (1) invalidated the provisions that allowed for case-by-case variances from toxicity limitations under the permit's alternate toxicity request provisions, and (2) held that EPA should have provided additional consideration to requiring the use of ''clean'' barite in drilling fluids. Today's proposal responds to that decision.

In the reissuance of these NPDES general permits, EPA Region 4 is responding to four legal or regulatory developments. The first legal development is the decision of the Ninth Circuit Court on challenges to the 1986 permit. All references to alternative toxicity limits are eliminated from this permit and the use of clean barite is required for drilling operations. The second regulatory development is the promulgation of final BAT and NSPS guidelines for the offshore subcategory (58 FR 12454). These NPDES general permits provide an explanation of how the determination of new sources will be made and incorporate the limitations and conditions set forth by the guidelines for offshore exploration, development, and production waste streams. The third and fourth regulatory developments are EPA's national policy on water quality-based permit limitations (49 FR 9016) and the issuance of pollution prevention regulations by the U.S. Coast Guard (33 CFR 151). The national policy is a strategy to control pollutants beyond BAT in order to meet water quality standards by use of biological and chemical methods to address toxic and nonconventional pollutants. The U.S. Coast Guard regulations are incorporated into the permit to be consistent with international regulations for the disposal of food and incinerator wastes.

Comments on these draft NPDES general permits need not be limited to those changes listed above. EPA is specifically soliciting information to further characterize present and anticipated activities on the eastern Gulf of Mexico OCS. EPA Region 4 may revise any provisions of the permit in response to public comments when it issues the final permit.

IV. Statutory Basis for Permit Conditions

Sections 301(b), 304, 306, 307, 308, 401, 402, 403 and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. 1311, 1314(b), (c) and (e), 1316, 1317, 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 101 Stat. 7 Pub. L. 100–4 (''the Act'' or CWA''), and the U.S. Coast Guard Regulations (33 CFR Part 151), provide the basis for the permit conditions contained in both the existing and new source general permits. The general requirements of these sections fall into three categories, which are described in sections A–C below.

4A. Technology Bases

1. BPT Effluent Limitations

The Act requires particular classes of industrial discharges to meet effluent limitations established by EPA. EPA promulgated effluent guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore and Coastal Subcategories of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subparts A and D) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines require ''no discharge of free oil'' for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation requires that a discharge shall not cause a film or sheen upon, or discoloration on, the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 435.11(d)). The BPT effluent limitation guideline for sanitary waste required that the concentration of chlorine be maintained as close to 1 mg/l as possible in discharges from facilities housing ten or more persons. No floating solids are allowed as a result of sanitary waste discharges from facilities continuously staffed by nine or fewer persons or intermittently staffed by any number. A ''no floating solids'' guideline also applies to domestic waste. BPT limitations on oil and grease in produced water allowed a daily maximum of 72 mg/l and a monthly average of 48 mg/l.

2. BAT and BCT Effluent Limitations and New Source Performance Standards

As of March 31, 1989, all permits are required by section 301(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) and nonconventional pollutants through the use of Best Available Technology Economically Achievable (BAT), and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) for the Offshore Subcategory were proposed on August 26, 1985 (50 FR 34592) and signed on January 15, 1993 (58 FR 12454, March 4, 1993). The new guidelines were established under the authority of sections 301(b), 304, 306, 307, 308, and 501 of the Act. The new guidelines were also established in response to a Consent Decree entered on April 5, 1990 (subsequently modified on May 28, 1993) in *NRDC* v. *Reilly,* D. D.C. No. 79–3442 (JHP) and are consistent with EPA's Effluent Guidelines Plan under section 304(m) of the CWA (57 FR 41000, September 8, 1992). The proposed existing source general permit, incorporates BAT and BCT effluent limitations based upon the more stringent standards of the recently promulgated effluent guidelines or previous general permit existing requirements, and incorporate additional discharge restrictions based on environmental data. The proposed new source general permit is based on the recently promulgated NSPS based on the best available demonstrated technology, and incorporate additional discharge restrictions based on environmental data. Since the March 4, 1993 Offshore Effluent Guidelines and New Source Performance Standards basically set BAT limitations equal to NSPS, the proposed limitations, conditions, and monitoring requirements for today's proposed existing source general permit and new source general permit are identical.

3. Previous NPDES General Permit Limitations

Per Section 402(o)(1) of the Clean Water Act and 40 CFR 122.44(l), when a permit is reissued the effluent limitations must be as stringent as the final effluent limitations of the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued. Part IV of the fact sheet discusses the new or changed permit limitations and conditions. All the limitations of the proposed NPDES general permit are as stringent or more stringent as the previous permit effluent limitations and conditions. The Alternative Toxicity Requests (ATRs) language of the previous permit, which allowed more toxic muds to be discharged after a case-by-case review, were invalidated by the Ninth Circuit Court; therefore, all references to the ATR process are deleted from this proposed NPDES general permit.

B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas (*i.e.*, state and federal offshore waters) be issued in accordance with guidelines for determining the potential degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 of the Act are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (49 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a definitive determination of no unreasonable degradation cannot be made because of insufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge shall be halted or additional permit limitations established.

A preliminary Ocean Discharge Criteria Evaluation has been drafted. Region 4 has determined that discharges occurring under the proposed NPDES general permits, incorporating appropriate effluent limits and monitoring requirements, will not cause unreasonable degradation for existing and new source dischargers occurring in areas seaward of the 200-meter water depth in the Eastern Planning Area and seaward of the outer boundary of the territorial seas in the Central Planning Area (except in designated areas of biological concern).

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i), the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in the permit, as listed in the table in section VI.A of this fact sheet.

V. Summary of New or Changed Permit Limitations and Conditions

The following discussion is intended to provide a summary of the parts of the proposed permit which are substantively different from the 1986 permit. For a detailed discussion of requirements and their bases, please refer to Section VI of this fact sheet. Many of the new and changed requirements result from promulgation of the final Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory in March, 1993 (see 40 CFR Part 435, Subpart A).

A. Alternative Toxicity Requests

The existing OCS general permit contains a general toxicity limitation on drilling fluids, prohibiting the discharge of fluids having an aquatic toxicity LC50 value of less than 30,000 ppm of the suspended particulate phase (SPP). Because the Regions believed that some specific drilling operations might require the limited use of more toxic drilling fluids, the permit also contained a procedure under which an operator could submit an alternative toxicity request (ATR) for approval by the Region. Region 4 did not approve any ATRs under the existing general permit. Upon review, the Ninth Circuit Court invalidated the ATR provisions of the current permit. Therefore, all references to the ATR process are deleted from both proposed NPDES general permits, making it consistent with the Court's decision.

B. Cadmium and Mercury in Barite

EPA Region 4 is implementing the selected option of the BAT/NSPS effluent guidelines by limiting the amount of cadmium (Cd) and mercury (Hg) discharged in drilling fluids to 3 mg of Cd/kg and 1 mg of Hg/kg (dry weight) in the source barite used in drilling fluids. This limitation also is consistent with the Ninth Circuit Court's decision that operators should be required to use the cleanest source of barite available. The limitations and monitoring requirements for cadmium and mercury are the same for both the existing source and new source general permits.

The toxic pollutants cadmium and mercury are found in barite which is added to drilling fluids as a weighting agent. Different types of barite deposits contain varying concentrations of toxic pollutants, with bedded deposits (referred to as ''clean'') containing the lowest metal levels, while vein deposits have much higher concentrations of trace metals. The Agency, when the OCS Gulf of Mexico general permit was first issued, decided not to impose limits on cadmium and mercury because of incomplete information on the availability of clean barite for all Gulf operations. However, the Ninth Circuit Court held invalid the Agency's decision not to impose any limitations on cadmium and mercury in discharged drilling fluids and stated that ''EPA should provide in the Gulf of Mexico permit, as it did in the Alaska permit, that clean barite should be used as long as it is available.'' The BAT/NSPS limitations of this in both the existing source and new source general permit are consistent with that decision.

A representative sample of the stock barite shall be monitored and reported once for each well or once for each additional supply of barite received while drilling a well. If subsequent wells are drilled at a site, new analyses are not required for each well if no new supplies of barite are received since the previous analysis.

The results for total mercury and cadmium shall be reported on the monthly Discharge Monitoring Report (DMR) for each well drilled. If a previous analysis is used in subsequent months or for subsequent wells, the results of that analysis should be reported on the DMRs for the later months and wells. If the supplier of the barite provides the analysis to the operator, the concentration shall be reported on the DMR with an indication that the information was provided by the supplier. All reported analyses, whether performed by the permittee or the supplier of the barite, shall be conducted by absorption spectrophotometry (see 40 CFR Part 136, flame and flameless AAS) and results expressed as mg/kg (dry weight) of barite.

C. New Sources Performance Standards (NSPS)

NSPS have been added to operations previously defined as new sources in the fact sheet. In accordance with 58 FR 12456 of March 4, 1993, NSPS are based on the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls and treatment technologies that reduce pollution to the maximum extent feasible. In addition, in establishing NSPS, EPA is required to take into consideration the cost of achieving the effluent reduction and any non-water impacts and energy requirements.

D. Free Oil

The existing NPDES general permit requires operators to use the visual sheen test to monitor for free oil on the surface of the receiving water when discharging muds and cuttings. This method can be used only during daylight when weather and sea conditions are such that observation of a sheen is possible. At all other times, discharge is permitted provided that the operator used an alternate test, the static (laboratory) sheen test, for monitoring for free oil. However, BAT and NSPS effluent guidelines require the use of the static sheen test for monitoring free oil at all times for discharges of muds and cuttings to offshore waters. In these proposed NPDES general permits, Region 4 is implementing the final effluent guidelines by requiring the static sheen test as the monitoring requirement for detecting free oil in drilling fluid and cuttings. The Region is requiring that this same method be used for well treatment, completion, and workover fluid discharges as well. In accordance with the final effluent guidelines, free oil from deck drainage will continue to be monitored as in the existing general permit by use of the visual sheen test. The Region feels that the static sheen test is the appropriate test method for the eastern Gulf of Mexico. Because the test is conducted prior to discharge, it allows the operator to avoid potential costly violations and affords more protection to the environment by requiring compliance monitoring before the discharge has occurred. The test is to be conducted in accordance with the methodology in the final effluent guidelines (58 FR 12506; see permit Part IV.A.3). The number of times that a sheen is observed shall be reported on the monthly DMR.

E. Produced Sand

The existing NPDES general permit requires operators to use the visual sheen test to monitor for free oil on the surface of the receiving water when discharging produced sand. This method can be used only during daylight when weather and sea conditions are such that observation of a sheen in the vicinity of the discharge is possible. The final BAT and NSPS effluent guidelines for the offshore subcategory prohibit the discharge of produced sand. EPA did not determine that the prohibition is the ''best available'' or ''best demonstrated'' technology. However, onshore disposal is widely practiced throughout the industry to meet the no free oil limitations either due to economics (cost of onsite washing is comparable to cost of onshore disposal), logistic considerations (scheduling or space requirements), or because of the inability to reliably meet the no free oil limitation even after washing. Region 4 is implementing the final guidelines by prohibiting the discharge of produced sand under both general permits.

F. Produced Water

The existing NPDES general permit established an effluent oil and grease limit for produced water of 48 mg/l monthly average and 72 mg/l daily maximum. The final effluent guidelines have established BAT and NSPS oil and grease limitations for produced water discharges of 29 mg/l monthly average and 42 mg/l daily maximum. These limitations are based on the use of gas flotation treatment technology which is determined to be the best available technology economically achievable for the offshore subcategory. Region 4 is implementing these limitations in both NPDES general permits for the eastern Gulf of Mexico OCS. Monitoring methods for this limitation are the same as under the existing permit. Both the highest daily maximum concentration and the monthly average concentration are reported on the monthly DMR.

G. Diesel Oil Prohibition

The existing OCS general permit contains provisions that established the Diesel Pill Monitoring Program (DPMP), a 15-month study to determine whether a diesel pill added to the mud system to free stuck pipe could effectively be removed from a mud system after use. Under the terms of the permit, the program was to last for one year with a possible extension of up to one additional year. At the end of the first year, EPA concluded that the DPMP had essentially reached its limit for gathering data necessary for evaluating that issue, but found some merit in extending the program for an additional 3-month period, ending September 30, 1987.

After the DPMP had expired, the existing general permit prohibited the discharge of drilling fluids containing diesel oil unless: (1) The diesel oil was added as a pill in an effort to free stuck pipe, (2) the pill and 50-barrel buffers on either side of the pill were removed from the drilling fluid system, (3) the remaining fluid to be discharged met the 30,000 ppm LC50 toxicity limitation, and (4) the discharge of the remaining fluid caused no visible sheen on the surface of the receiving water. Data collected under the DPMP showed that diesel could not effectively be removed from a drilling fluids system after use of a pill. A substantial amount of diesel oil remains in the drilling fluids system even after the pill and 100 barrels of drilling fluids system are removed. Therefore, the proposed permit no longer allows the discharge of drilling fluids to which a diesel pill has been added, even when the pill and a 50-barrel buffer on either side are removed from the system. Under the proposed reissuance, all references to the DPMP are deleted from the permit and discharge of muds to which diesel oil has been added is prohibited. However, both the proposed NPDES existing source general permit and NSPS general permit would allow the discharge of drilling fluids where non-diesel oils and mineral oils have been introduced to the mud system while drilling, provided that the mud system meets the toxicity and free oil limitations before discharge.

H. Water Quality-Based Effluent Limitations and Conditions

The CWA states ''* * * it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited. * * *'' To ensure that the CWA's prohibitions on toxic discharges are met, EPA has issued a ''Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants'' (49 FR 9016; March 9, 1984). This national policy states that an ''integrated strategy consisting of both biological and chemical methods to address toxic and nonconventional pollutants'' will be used to control pollutants beyond BAT. For NPDES permits, these strategies include numerical limits for toxic pollutants to assure compliance with state standards and use of biological techniques and available data on chemical effects to assess toxicity impacts and human health hazards based on the general standard of ''no toxic materials in toxic amounts.''

Based on available data, EPA has determined that there are pollutants present in produced water discharges that have the potential to cause toxic conditions in the receiving water or sediment in violation of Section

101(a)(3) of the CWA. Whole effluent biomonitoring is the most direct measure of potential toxic effects that incorporates the effects of synergism of effluent components. It is the national policy of EPA to use toxicity tests to evaluate the toxic effects of a discharge upon a receiving water (49 FR 9016, March 9, 1984). This proposed permit establishes effluent limitations on the whole effluent toxicity of produced water. Both the daily average and the monthly minimum toxicity (96-hour LC50) value shall not be less than the limiting permissible concentration at the edge of the mixing zone as defined in the Ocean Discharge Criteria (40 CFR 125). The Ocean Discharge Criteria incorporates the limiting permissible concentration definition of the Ocean Dumping Criteria, which is ''0.01 of a concentration shown to be acutely toxic to appropriate sensitive marine organisms in a bioassay'' (40 CFR 227.27). The mixing zone is defined under the Ocean Discharge Criteria (40 CFR 125.121(c)) as the zone extending from the sea's surface to the seabed and extending 100 meters in all directions from the discharge point. Therefore, the toxicity limitation of these permits require that the discharged effluent meet a toxicity limitation of an LC50 greater than the effluent concentration at the edge of the mixing zone times 0.01. The method for determining this toxicity limitation on a case-by-case basis is described below.

I. Aquatic Toxicity Limits and Testing Requirements for Produced Water

For produced water discharges, the Region is using a discharge model to predict the effluent concentration that will occur at the edge of a 100-meter mixing zone in order to calculate site-specific toxicity limitations. The model will use parameters provided by the operator (maximum discharge rate, water depth, discharge pipe diameter, and discharge pipe orientation) as input. All other input parameters are based on available data for the eastern Gulf of Mexico. Given these parameters, the Region will calculate a toxicity limitation for each facility before discharges may occur. The methodology for determining the toxicity limitation for produced water, including derivation of the input parameters, is detailed below.

Because all future site-specific limitations cannot be anticipated and commented on at this time, the Region is proposing the method by which the toxicity limitations will be calculated. As part of this method, the Region is establishing certain parameters of the variables in the derivation as constant. These variables, or model input parameters are discussed below. The Region solicits comments at this time on the methodology for determining the effluent limitation and on the selected input parameters. The Region will not be publicly noticing all future produced water toxicity limitation determinations for the duration of this permit.

To establish a facility's produced water toxicity limit, an operator must submit the information requested at Appendix A of the permit. The necessary information for input in the CORMIX model consists of: maximum discharge rate, minimum receiving water depth, discharge pipe location (depth and orientation with respect to the seafloor), and discharge pipe opening diameter. Parameters that are proposed to remain constant for CORMIX input include effluent density, ambient current speed, and the water column density profile. The information will be used by the Region as input for the CORMIX expert system (v. 1.4; Doneker and Jirka, 1990) to determine the projected effluent concentration at the edge of the mixing zone in order to calculate the toxicity limitation. Each month, the operator is required to demonstrate compliance with this toxicity limitation by conducting toxicity tests using Mysidopsis bahia and sheepshead minnows to determine the 96-hour LC50s.

The derivation/selection of the proposed constant parameters is discussed below. The effluent density was determined from temperature and salinity data submitted to the Louisiana Department of Environmental Quality (DEQ) for produced water discharges to state waters (Avanti Corporation, 1992). A density of 1,070.2 kg/m^3 represents a produced water with a salinity of 100 ppt (approximately the lower 33rd percentile of all DEQ data) and a temperature of 105 °F (approximately the upper 90th percentile of the DEQ data).

The current speed of 4 cm/sec represents the median of data collected offshore Alabama using a current meter placed at a 10 meter water depth in 30 meters of water (Texas A&M, 1991).

The water column density profile is based on data reported for offshore Alabama in Temple *et al.* (1977). Temperature and salinity data for the 7- and 14-meter contours were used to determine the average surface density and the average density gradient. The average surface density reported for the monitoring year was 1,023 kg/m^3 and the average density gradient was 0.163 kg/m^3/m. For each discharge modeled, the average surface density is used with a bottom density calculated as: [1,023 + (water depth $\times$ 0.163)].

Due to limitations of the model with respect to allowable discharge pipe orientation, CORMIX is used with an inverted density profile and run as a mirror image of actual discharge scenarios. This inversion method, described in the Ocean Discharge Criteria Evaluation (Avanti Corp., 1993a), reverses the actual scenario of a dense discharge from the surface to a scenario of a buoyant discharge from the bottom. All density differentials are held constant.

Also, although CORMIX was determined to be the best model available to predict discharges for OCS waters (LimnoTech and Wright, 1993), it does underestimate far-field dilutions (Wright, 1993). In applying the model to this permit, the Region is using an alternate method to calculate the far-field dilution (the dilution that occurs after initial mixing). For discharges that do not impact the bottom, Brook's 4/3 power law is used to determine the effluent dilution at the edge of the mixing zone using input from CORMIX initial mixing projections.

The resulting projected effluent concentration at 100 meters is used by EPA to calculate the toxicity limitation (0.01 $\times$ effluent concentration = minimum LC50 limitation) for the outfall modeled. This ensures that the discharge will not be acutely toxic beyond the prescribed mixing zone. For example, using this methodology, for the three outfalls currently discharging in the Mobile area, CORMIX (using the 4/3 power law) projects dilutions of 83,721 for Block 908, 4,943 for Block 990, and 3,631 for Block 821. These dilutions result in respective toxicity limitations of 1,200 ppm effluent; 20,000 ppm effluent; and 27,500 ppm effluent. These limitations are minimum LC50 values for 96-hour tests. Other potential produced water discharges occurring in the Gulf of Mexico would be subject to this produced water toxicity limitation and will be determined upon initiation of a produced water discharge and receipt of data requested by EPA in Appendix A of the permit.

The testing protocols for determining the 96-hour LC50s are provided in ''Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms'' (EPA/600/4–85/013 or the most recent update). The test must be conducted using *Mysidopsis bahia* and sheepshead minnows (*Cyprinodon variegatus*). The permittee (or contract laboratory) shall prepare and submit a full report of the results according to the Report Preparation

Section of the EPA methods manual. The original reports shall be retained for three (3) years pursuant to the provisions of part II.C.5 of the permit. The LC50s must be reported monthly, accompanied by a copy of the full laboratory report.

Although the produced water itself may not greatly vary in quality on the short term, many toxic chemicals such as biocides, corrosion inhibitors, pipe descalers, and paraffin inhibitors are discharged in produced waters and may affect the toxicity. The proposed permits require operators to collect samples that are representative of the discharge when these chemicals are being used. Logistically it may be difficult for operators covered under these permits to collect and ship additional effluent samples to be used for replacement water during the biomonitoring test, so the proposed permits allow the permittees to collect only one effluent sample to be used for all replicates in the biomonitoring test. The proposed permits also allow operators to use synthetic dilution water to minimize logistical and transportation problems associated with sample collection.

J. Discharge Prohibition in Vicinity of Areas of Biological Concern

The NPDES General permit prohibits the discharges of drilling fluids, drill cuttings and produced waters within 1000 meters from the edge of an area of biological concern. The 1000 meter minimum distance for discharge near areas of biological concern and no activity areas is based on environmental study data that demonstrate the potential for acute and chronic biological and ecological impacts due to exposure to drilling fluids and produced water discharges at distances in the 1000–2000 meter range. Environmental studies consistently and conclusively demonstrate significant chemical and biological changes from drilling fluids and cuttings discharges at distances within 500 meters and 2000–3000 meters for frequent chemical occasional biological changes. Chemical and biological impacts as a result of produced water discharges are greatest in the 100–300 meter range and elevations of chemical contaminants have been detected in the 1000–2000 meter range.

K. Rubbish, Trash, and Other Refuse (MARPOL)

Under Annex V to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78), the U.S. Coast Guard (USCG) issued regulations on the disposal of domestic waste from all fixed or floating offshore platforms and vessels engaged in exploration or exploitation of seabed mineral resources (33 CFR 151). As specified by 33 U.S.C. 1901, those regulations apply to all navigable waters of the U.S. (including the entire Gulf of Mexico), and are included in both the existing source general permit and the new source general permit.

As proposed, these permits prohibit the discharge of ''garbage,'' including food wastes, from facilities located within 12 nautical miles from nearest land. Comminuted food waste that is able to pass through a screen with a mesh size no larger than 25 mm (approximately 1 inch) may be discharged 12 or more nautical miles from the nearest land. Incineration ash and non-plastic clinkers that can pass through a 25 mm mesh screen may be discharged beyond 3 nautical miles from nearest land. Otherwise ash and non-plastic clinkers may be discharged only beyond 12 nautical miles from nearest land.

Under these general permits, these limitations, which are already effective under the USCG regulations, will be incorporated for consistency purposes. Because graywater discharges from dishwater, showers, baths, laundries, and washbasins are not subject to these USCG regulations, they will remain subject to the same requirements for domestic waste as under the expired OCS general permit.

L. 24-Hour Reporting Requirement

The Region is proposing to clarify several specific situations where discharges occur that require oral reporting under the 24-hour reporting requirement. They include: the discharge of 1 barrel or more of oil from any permitted waste stream (this does not include spills reported to the National Response Center as regulated under Section 311 of the Clean Water Act), the discharge of muds or cuttings which do not meet the 30,000 ppm toxicity limitation, and any discharge of oil-based muds or cuttings. Under the proposed permits, a permittee must verbally notify the Regional office within 24 hours of the time at which the permittee becomes aware of the discharge. A written submission must also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours. The 24-hour reporting number for Region 4 is located in Part II.D.7 of the permit.

M. Reopener Clause

These permits shall be modified, or alternately, revoked and reissued to comply with any effluent standard or limitation, or sludge disposal requirement issued or approved under Sections 301(b)(2)(C) and (D), 307(a)(2), and 405(d)(2)(D) of the Clean Water Act, as amended, if the effluent standard or limitation, or sludge disposal requirement so issued or approved:

a. Contains different conditions or is otherwise more stringent than any condition in the permit; or

b. Controls any pollutant or disposal method not addressed in the permit.

The permits as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

Further, the RA may at anytime require a general permit holder to apply for an individual permit, as set forth in 40 CFR Section 122.28(b)(3).

N. Clarifications

The Region is taking this opportunity to clarify definitions, end of well sampling requirements, and the visual and static sheen tests. These clarifications are not new definitions; they are further clarifications of the Agency's original intent of their application.

Boiler Blowdown

Existing: Discharges from boilers necessary to minimize solids build-up in the boilers.

Clarification: Discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

Completion Fluids

Existing: Any fluids used in a newly drilled well to allow safe preparation of the well for production.

Clarification: Salt solutions, weighted brines, polymers and various additives used to prevent damage to the wellbore during operations which prepare the drilled well for hydrocarbon production. These fluids prevent solid loss, prepare a well for production, provide hydrostatic control and prevent formation damage.

Deck Drainage

Existing: All waste resulting from platform washings, deck washings, and runoff from curbs, gutters, and drains, including drip pans and wash areas.

Clarification: All waste resulting from platform washings, deck washings, work area spills, rainwater, and runoff from curbs, gutters, and drains, including drip pans and work areas.

Domestic Waste

Existing: Discharges from galleys, sinks, showers, and laundries only.

Clarification: Discharges from galleys, sinks, showers, safety showers, eye wash stations, and laundries.

Muds, Cuttings, and Cement at the Seafloor

Existing: Discharges that occur at the seafloor prior to installation of the marine riser.

Clarification: Discharges that occur at the seafloor prior to installation of the marine riser and during marine riser disconnect, well abandonment and plugging operations.

Produced Sand

Existing: Sand and other solids removed from the produced waters.

Clarification: Slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream and blowdown of the water phase from produced water treating systems.

Produced Water

Existing: Water and particulate matter associated with oil and gas producing formations.

Clarification: Water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

Well Treatment Fluids

Existing: Any fluid used to enhance production by physically altering oil-bearing strata after a well has been drilled.

Clarification: Any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

Workover Fluids

Existing: Any fluid used in a producing well to allow safe repair and maintenance or abandonment procedures.

Clarification: Salt solutions, weighted brines, polymers and other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. These fluids prevent solid loss, prepare a well for production, provide hydrostatic control and prevent formation damage. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids. High-solids drilling fluids used during workover operations are not considered workover fluids by definition, and therefore must meet drilling fluid effluent limitations before discharge may occur.

End of Well Sample

Existing: The end of well definition in the existing Gulf of Mexico OCS general permit requires that a sample be taken at the point when total well depth is reached. The original intent of the end of well sample was to characterize the mud system just prior to being discharged. It is now known that several weeks may pass after the well has reached maximum drilled depth before the actual discharge of the mud system. Formation evaluation (running logs, drill stem tests, etc.) and completion operations such as setting pipe may all occur after reaching total drilled depth while still using the same drilling fluid used to drill the well. For this reason, the end of well sample definition is being changed to read as below:

Changed: The sample taken no more than 48 hours prior to bulk discharge and after any additives are introduced in order to best characterize the mud systems being discharged.

The type of sample required is a grab sample, taken from beneath the shale shaker, or if there are no returns across the shaker, then the sample must be from a location that is characteristic of the overall mud system to be discharged. An end of well sample, as a daily minimum, must be taken no more than 48 hours prior to bulk discharge. If any additional additives are introduced to the mud system during this 48-hour period, then a new sample must be collected, analyzed, and will be recorded as the end of well sample. The purpose of this sample is to accurately characterize the mud system that is being discharged.

Static Sheen Test

The static sheen test may be used as an alternative method to detect free oil in place of the visual sheen test at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (*e.g.*, rough seas, rainy weather, etc.). The test shall be conducted in accordance with the methodology presented in the permit at Part IV.A.3.

Visual Sheen Test

The visual sheen test procedure is being added to the text in order to clarify the test methodology: The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. A sheen is defined as a ''silvery'' or ''metallic'' sheen, gloss, or increased reflectivity; visual color; iridescence; or oil slick on the surface. The operator must conduct a visual sheen test only at times when a sheen could be observed. This restriction eliminates observations at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (*e.g.*, during rain or rough seas, etc.). Certain discharges can only occur if a visual sheen test can be conducted.

The observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made both during discharge and 5 minutes after discharge has ceased.

VI. Permit Conditions

A. Determination of Discharge Conditions

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT,

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT,

(3) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under NSPS,

(4) Consideration of more stringent permit conditions of existing general permit in accordance with Section 402(o)(1) of the Clean Water Act.

(5) Evaluation of the Ocean Discharge Criteria for discharges in the Offshore Subcategory (given conditions 1 thru 4 are in place).

EPA first determines which technology-based limits are required and then evaluates the effluent quality expected to result from these controls. If water quality violations could occur as a result of discharge, EPA must include water quality-based limits in the permit. The permit limits will thus reflect whichever limits (technology-based or water quality-based) are most stringent. Finally, an Ocean Discharge Criteria Evaluation (ODCE) has been prepared to identify any additional impacts created by these proposed discharges.

General area and depth related requirements and 403(c) flow rate requirements are discussed in section VI.B. and VI.C of this fact sheet. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in Table 2 below:

Discharge and permit conditions	Statutory basis/existing sources	Statutory basis/new sources
Produced Water:		
Monitor Flow (MGD)	§ 308	§ 308.
Oil & Grease	BCT, BAT	NSPS.
Whole Effluent Toxicity (WET)	Water Quality Standards	Water Quality Standards.
>200 meters EPA—No Unreasonable Degradation	§ 403	§ 403, EIS.
>1000 meters from Area of Biological Concern—No Unreasonable Degradation.	§ 403	§ 403.
Well Treatment, Completion, & Workover Fluids:		
Monitor Frequency/Flow Rate	§ 308	§ 308.
No Free Oil	BPT, BCT	NSPS.
Oil & Grease	BAT	NSPS.
>200 meters EPA—No Unreasonable Degradation	§ 403	§ 403, EIS.
Deck Drainage:		
Monitor Frequency/Flow Rate	§ 308	§ 308.
No Free Oil	BPT, BCT, BAT	NSPS.
>200 meters—No Unreasonable Degradation	§ 403	§ 403, EIS.
Produced Sand:		
No Discharge Allowed	BCT, BAT	NSPS.
Sanitary Waste (manned by 10 or more):		
Residual Chlorine	BPT, BAT	NSPS.
>200 meters EPA—No Unreasonable Degradation	§ 403	§ 403, EIS.
Sanitary Waste (manned by 9 or less):		
No Floating Solids	BPT, BCT	NSPS.
>200 meters EPA—No Unreasonable Degradation	§ 403	§ 403, EIS.
Domestic Waste:		
No Foam	BAT	NSPS.
No Floating Solids	BCT/BAT	NSPS.
>200 meters EPA—No Unreasonable Degradation	§ 403	§ 403, EIS.
Well Test Fluids:		
Monitor Frequency/Flow Rate	§ 308	§ 308.
No Free Oil	BCT, BAT	BCT, BAT.
>200 meters EPA—No Unreasonable Degradation	§ 403	§ 403, EIS.
Minor Wastes:		
Desalination Unit Discharge, Blow Out Preventer Fluids, Uncontaminated Ballast Water, Muds Cuttings & Cement at Seafloor, Uncontaminated Sea Water, Fire Test Water, Boiler Blowdown, Excess Cement Slurry, Diatomaceous Earth Filter Media, Uncontaminated Fresh Water, Noncontaminated Fresh Water		
No Free Oil	BCT, BAT	BCT, BAT.
>200 meters EPA—No Unreasonable Degradation	§ 403	§ 403.

B. Area and Depth-Related Requirements

The discharge restrictions and requirements listed below are necessary to ensure that unreasonable degradation of these areas will not occur as discussed above in part III.B. of this fact sheet (Ocean Discharge Criteria) and are largely unchanged from the 1986 permit to the proposed permit. Discharge within the area described below the 26° parallel is prohibited due to a order which establishes a moratorium on drilling activity on leases in that area.

Pertaining to all discharges, these NPDES general permits only provide coverage for discharges occurring:

—In water depths greater than 200 meters in the Eastern Planning Area (as measured from mean low water).

—In waters seaward of the outer boundary of the territorial seas in the Central Planning Area, except designated areas of biological concern.

—For leases not under moratorium; which is currently areas above the 26° parallel.

C. Section 403(c) Requirements for Muds and Cuttings

Flow rates: In addition to restrictions on all discharges imposed under section 403(c) of the Act and discussed in section III.B. of this fact sheet, muds and cuttings discharges are limited to the following maximum rates. These limitations are identical to those contained in the 1986 general permit.

1,000 bbl/hr on total muds and cuttings. This limit was established in the previous 1986 permit because reliable dispersion data are available only up to this discharge rate and because this rate did not represent any serious operational problem based on comments received from the industry and discharge monitoring reports.

VII. Other Legal Requirements

National Environmental Policy Act

Under the direction of the National Environmental Policy Act (NEPA), EPA and MMS entered into a Memorandum of Understanding to coordinate efforts on environmental impact statements

(EIS) for areas covered by new source performance standards before EPA issues final permits covering discharges. EPA has completed a draft EIS for this general permit and is accepting public comment on that document. A final EIS will be prepared before issuance of the final permit. EPA also will coordinate with MMS for complying with NEPA for specific new source (production) projects.

Oil Spill Requirements

Section 311 of the Clean Water Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges that are in compliance with NPDES permits are excluded from the provisions of section 311. However, the permits do not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials that are covered by section 311 of the Act.

Endangered Species Act

The Endangered Species Act (ESA) allocates authority to, and administers requirements upon, federal agencies regarding endangered species of fish, wildlife, or plants that have been designated as critical. Its implementing regulations (50 CFR Part 402) require the RA to ensure, in consultation with the Secretaries of Interior and Commerce, that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat (40 CFR 122.49(c)). Implementing regulations for the ESA establish a process by which agencies consult with one another to ensure that issues and concerns of both the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) collectively are addressed. The NMFS and USFWS have responded to EPA's initiation of the coordination process under the regulations set forth by section 7 of the Endangered Species Act. The 36 species identified by NMFS and USFWS as threatened or endangered species within the permit coverage area have been assessed for potential effects from the activities covered by the proposed permit in a biological assessment incorporated in the Draft EIS. This biological assessment has been submitted to the NMFS and USFWS along with the proposed permit for consistency review and concurrence on the Region's finding of no adverse effect. The Region's finding is appended to the EIS.

Ocean Discharge Criteria Evaluation

For discharges into waters located seaward of the inner boundary of the territorial seas, the Clean Water Act at section 403, requires that NPDES permits consider guidelines for determining the potential degradation of the marine environment. The guidelines, or Ocean Discharge Criteria (40 CFR part 125, subpart M), are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980). After all available comments and information are reviewed, the final 403 determination will be made.

A revised preliminary Ocean Discharge Criteria Evaluation (ODCE) determination of no unreasonable degradation has been made by Region 4 based on an analysis by Avanti Corporation (1993a). The potential effects of discharges under the proposed permit limitations and conditions are assessed in this draft document available from Region 4. The ODCE states that, based on the available information, the permit limitations are sufficient to determine that no unreasonable degradation should result from the permitted discharges.

Coastal Zone Management Act

The coverage area of the proposed general permit includes only Federal waters of the eastern Gulf of Mexico. However, the State waters of Florida, Alabama, and Mississippi are potentially affected by activities covered under the permit. Therefore, the coastal zone management plans of Florida, Alabama, and Mississippi have been reviewed for consistency and consultation with the states for consistency concurrence has been initiated. A consistency determination for each state and the proposed permit have been submitted for state review. The consistency determinations are appended to the EIS.

Marine Protection, Research, and Sanctuaries Act

No marine sanctuaries as designated by the Marine Protection, Research, and Sanctuaries Act exist in the area to which the OCS permit applies.

Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

Paperwork Reduction Act

The information collection required by these permits has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

All facilities affected by these permits must submit a notice of intent to be covered under the eastern Gulf of Mexico OCS general permit GMG280000. EPA estimates that it will take an affected facility three hours to prepare the request for coverage.

All affected facilities will be required to submit discharge monitoring reports (DMRs). EPA estimated DMR burden for the existing permit to be 36 hours per facility per year. The DMR burden for these proposed permits is expected to increase slightly due to the additional reporting required for calculating the critical dilution for produced water discharges. While this permit requires some increased monitoring and reporting of that data, the DMR burden for the proposed permits is estimated to increase slightly and facilities affected by this permit reissuance were subject to similar information collection burdens under the existing Gulf of Mexico OCS general permit that this proposed reissuance will replace.

Regulatory Flexibility Act

After review of the facts presented above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these proposed general permits will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the vast majority of the parties regulated by this permit have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). For those operators having fewer than 500 employees, this permit issuance will not have significant economic impact. These facilities are classified as Major Group 13—Oil and Gas Extraction SIC Crude Petroleum and Natural Gas.

Proposed Schedule for Permit Issuance

Draft Permit to **Federal Register** for Public Notice—January 2, 1998.

Close Comment Period—February 16, 1998.

Dated: [Signature date]

Regional Administrator,

Regional Administrator, Region 4.

References

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GENERAL PERMIT TABLE OF CONTENTS

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), operators of lease blocks located in OCS Federal waters seaward of 200 meters in the Eastern Planning Area and seaward of the outer boundary of the territorial seas in the Central Planning Area with existing source or new source discharges originating from exploration or development and production operations are authorized to discharge to receiving waters in accordance with effluent limitations, monitoring requirements, and other conditions set forth in parts I, II, III, and IV hereof.

Operators of operating facilities within the proposed NPDES general permit area must submit written notification to the Regional Administrator, prior to discharge, that they intend to be covered by either the existing source general permit or the new source general permit (See part I.A.3). Upon receipt of notification of inclusion by the Regional Administrator, owners or operators requesting coverage are authorized to discharge under either the existing source or new source general permit. Operators of lease blocks within the general permit area who fail to notify the Regional Administrator of intent to be covered by this general permit are not authorized under the general permit to discharge pollutants from their potential new or existing source facilities. This permit does not apply to non-operational leases, *i.e.*, those on which no discharge has taken place in 2 years prior to the effective date of the new general permits. EPA will not accept Notice of Intents (NOI's) from such leases, and these general permits will not cover such leases. Non-operational leases will lose general permit coverage on the effective date of these new general permits.

This permit shall become effective at [*time*], Eastern Standard Time, on [*Month, Day, 19*]. Coverage under the old general permit shall terminate on the effective date of this permit, unless the owner/operator submits a notice of intent (NOI) to be covered within 60 days thereafter, or an application for an individual permit within 120 days thereafter. If an NOI is filed, coverage under the old general permit terminates upon receipt of notification of inclusion by letter from the Director of the Water Management Division, Region 4. If a permit application is filed, the old general permit terminates when a final action is taken on the application for an individual permit. This permit and the authorization to discharge shall expire [*time*], Eastern Standard Time, on *5 years from date of issuance.*

Signed this [*day*] day of [*month*], Year.

Director, Water Management Division, EPA, Region 4.

Part I. Requirements for NPDES Permits

Section A. Permit Applicability and Coverage Conditions

1. Operations Covered

These permits establish effluent limitations, prohibitions, reporting requirements, and other conditions for discharges from oil and gas facilities engaged in production, field exploration, drilling, well completion, and well treatment operations from potential new sources and existing sources.

The permit coverage area includes Federal waters in the Gulf of Mexico seaward of the 200 meter water depth for offshore Alabama and Florida in the Eastern Planning Area, and seaward of the outer boundary of the territorial seas for offshore Mississippi and Alabama in the Central Planning Area. This permit only covers facilities located in and discharging to the Federal waters listed above and does not authorize discharges from facilities in or discharging to the territorial sea (within 3 miles of shore) of the Gulf coastal states or from facilities defined as ''coastal'' or ''onshore'' (see 40 CFR, part 435, subparts C and D).

2. Operations Excluded

Any operator who seeks to discharge drill fluids, drill cuttings or produced water within *1000* meters of an area of biological concern is ineligible for coverage under these general permits and must apply for an individual permit.

Any operator with leases occurring below the 26° parallel which are currently under moratorium are excluded from inclusion under these general permits.

No coverage will be extended under either of the new general permits to non-operational leases.

3. General Permit Applicability

In accordance with 40 CFR 122.28(b)(3) and 122.28(c), the Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) It is determined that the facility is located in an area of biological concern.

(g) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than 180 days before an activity is scheduled to commence on the lease block. When an individual NPDES permit is issued to an operator otherwise subject to this permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source after the notification of intent to be covered is filed (see I.A.4, below).

4. Notification Requirements (Existing Sources and New Sources)

Written notification of intent (NOI) to be covered in accordance with the general permit requirements shall state whether the permittee is requesting coverage under the existing source general permit or new source general permit, and shall contain the following information:

(1) The legal name and address of the owner or operator;

(2) The facility name and location, including the lease block assigned by the Department of Interior, or if none, the name commonly assigned to the lease area;

(3) The number and type of facilities and activity proposed within the lease block;

(4) The waters into which the facility will be discharging;

(5) The date on which the owner/operator commenced on-site construction, including:

(a) Any placement assembly or installation of facilities or equipment; or

(b) The clearing, excavation or removal of existing structures or facilities;

(6) The date on which the facility commenced exploration activities at the site;

(7) The date on which the owner/operator entered into a binding contract for the purchase of facilities or

equipment intended to be used in its operation within a reasonable time (if applicable);

(8) The date on which the owner/operator commenced development; and

(9) The date on which the owner/operator commenced production.

(10) Technical information on the characteristics of the sea bottom within 1000 meters of the discharge point, including but not limited to information regarding geohazards, topographical formations, live bottom, and chemosynthetic communities.

(11) MMS photo documentation survey according to most current MMS guidelines (NTL 88–3 or most current revision of Photodocumentation Surveys), for facilities in less than 100 meters water depth in the Central Planning Area.

All notices of intent shall be signed in accordance with 40 CFR § 122.22.

EPA will act on the NOI in a reasonable period of time.

For operating leases, the NOI shall be submitted within sixty (60) days after publication of the final determination on this action. Non-operational facilities are not eligible for coverage under these new general permits. No NOI will be accepted from either a non-operational or newly acquired lease until such time as an exploration plan or development production plan has been prepared for submission to EPA. Operators obtaining coverage under the existing source general permit for exploration activities must send a new NOI for coverage of development and production activities under the new source general permit sixty (60) days prior to commencing such operations. All NOI's requesting coverage should be sent by certified mail to: Director, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

For drilling activity, the operator shall submit a Notice to Drill (NTD) sixty (60) days prior to the actual move-on date. This NTD shall contain: (1) the assigned NPDES general permit number assigned to the lease block, (2) the latitude and longitude of the proposed discharge point, (3) the water depth, and (4) the estimated length of time the drilling operation will last. This NTD shall be submitted to Region 4 at the address above, by certified mail to: Director, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

In addition, a notice of commencement of operations (NCO) is required to be submitted for each of the following activities: placing a production platform in the general permit coverage area (within 30 days prior to placement); and discharging waste water within the coverage area (within 30 days prior to initiation of produced water discharges). The NCO required for discharging waste water shall be accompanied by the information requested in Appendix A for calculation of the toxicity limitation for produced water discharges. Within sixty (60) days after produced water discharge begins, the permittee shall perform adequate tests to establish a bbl/day estimate to be used in the Cormix model. This information must then be provided to EPA.

All NOIs, NTDs, NCOs, and any subsequent reports required under this permit shall be sent by certified mail to the following address: Director, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

5. Termination of Operations

Lease block operators shall notify the Director (at the address above) within 60 (sixty) days after the permanent termination of discharges from their facility.

6. Intent To Be Covered by a Subsequent Permit

This permit shall expire *five (5) years from the effective date of issuance.* However, an expired general permit continues in force and effect until a new general permit is issued. Lease block operators authorized to discharge by this permit shall by certified mail notify the Director, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104, on or before [*6 months prior to the expiration date of the permit*], that they intend to be covered by a permit that will authorize discharge from these facilities after the termination date of this permit on [*month, day of year*].

Permittees must submit a new NOI in accordance with the requirements of this permit to remain covered under the continued general permit after the expiration of this permit. Therefore, facilities that have not submitted an NOI under the permit by the expiration date cannot become authorized to discharge under any continuation of this NPDES general permit. All NOI's from permittees requesting coverage under a continued permit should be sent by certified mail to: Director, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

Section B. Effluent Limitations and Monitoring Requirements

1. Drilling Fluids

The discharge of drilling fluids shall be limited and monitored by the permittee as specified in both tables and below.

Note: The permit prohibitions and limitations that apply to drilling fluids, also apply to fluids that adhere to drill cuttings. Any permit condition that applies to the drilling fluid system, therefore, also applies to cuttings discharges.

(a) Prohibitions

Oil-Based Drilling Fluids. The discharge of oil-based drilling fluids and inverse emulsion drilling fluids is prohibited.

Oil-Contaminated Drilling Fluids. The discharge of drilling fluids to which waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication have been added, is prohibited.

Diesel Oil. Drilling fluids to which any diesel oil has been added as a lubricant or pill may not be discharged.

No Discharge Near Areas of Biological Concern. For those facilities within 1000 meters of an area of biological concern the discharge of drilling fluids is not allowed.

(b) Limitations

Mineral Oil. Mineral oil may be used only as a lubricity additive or pill. If mineral oil is added to a water-based drilling fluid, the drilling fluid may not be discharged unless the 96-hr LC50 of the drilling fluid is greater than 30,000 ppm SPP and it passes the static sheen test for free oil.

Cadmium and Mercury in Barite. There shall be no discharge of drilling fluids to which barite has been added if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight).

The permittee shall analyze a representative sample of each supply of stock barite prior to drilling each well and submit the results for total mercury and cadmium in the Discharge Monitoring Report (DMR). If more than one well is being drilled at a site, new analyses are not required for subsequent wells, provided that no new supplies of barite have been received since the previous analysis. In this case, the results of the previous analysis should be used for completion of the DMR.

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the barite being used on the well will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier.

Analyses shall be conducted by absorption spectrophotometry (see 40 CFR Part 136, flame and flameless AAS) and the results expressed in mg/kg (dry weight).

Toxicity. Discharged drilling fluids shall meet both a daily minimum and a monthly average minimum effluent toxicity limitation of at least 30,000 ppm, (v/v) of a 9:1 seawater:mud suspended particulate phase (SPP) based on a 96-hour test using *Mysidopsis bahia.* The method is published in the final effluent guidelines at 58 FR 12507. Monitoring shall be performed at least once per month for both the daily minimum and the monthly average minimum. In addition, an end-of-well sample is required (see definitions). The type of sample required is a grab sample, taken from beneath the shale shaker. Results of toxicity tests must be reported on the monthly DMRs. Copies of the laboratory reports also must be submitted with the DMRs.

Free Oil. No free oil shall be discharged. Monitoring shall be performed prior to discharges and on each day of discharge using the static (laboratory) sheen test method in accordance with the method provided in Part IV.A.3, as published in the final effluent guidelines (58 FR 12506). The discharge of drilling fluids that fail the static sheen test is prohibited. The results of each sheen test must be recorded and the number of observations of a sheen must be reported on each monthly DMR.

Maximum Discharge Rate. All facilities are subject to a maximum discharge rate of 1,000 barrels per hour. Average daily discharge rates must be recorded and the monthly average discharge rate reported on the monthly DMR in barrels/day (BPD).

(c) Monitoring Requirements

In addition to the above limitations, the following monitoring and reporting requirements also apply to drilling fluids discharges.

Drilling Fluids Inventory. The permittee shall maintain a precise chemical inventory of all constituents and their total volume or mass added downhole for each well. Information shall be recorded but not reported unless specifically requested by EPA.

Volume. Once per month, the total monthly volume (bbl/month) of discharged drilling fluids must be estimated and recorded. The volume shall be reported on the monthly DMR.

Oil Content. There is no numeric limitation on the oil content of discharged drilling muds (except that muds containing any waste oil, or diesel oil as a lubricity agent shall not be discharged). However, note that the oil added shall not cause a violation of either the toxicity or free oil limitations discussed above. The oil content of discharged drilling fluids shall be determined once per day when discharging, on a grab sample taken from the same mud system being observed for the static sheen (free oil) test.

2. Drill Cuttings

The discharge of drill cuttings shall be limited and monitored by the permittee as specified in both tables and below.

Note: The permit prohibitions and limitations that apply to drilling fluids also apply to fluids that adhere to drill cuttings. Any permit condition that applies to the drilling fluid system, therefore, also applies to cuttings discharges. Monitoring requirements, however, may not be the same.

(a) Prohibitions

Cuttings from Oil-Based Drilling Fluids. Prohibitions that apply to drilling fluids, set forth above in B.1(a), also apply to drill cuttings. Therefore, the discharge of cuttings is prohibited when they are generated while using an oil-based or invert emulsion mud.

Cuttings from Oil Contaminated Drilling Fluids. The discharge of cuttings that are generated using drilling fluids that contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication is prohibited.

Cuttings generated using drilling fluids which contain diesel oil. Drill cuttings generated using drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

Cuttings generated using mineral oil. The discharge of cuttings generated using drilling fluids which contain mineral oil is prohibited except when the mineral oil is used as a carrier fluid (transporter fluid), lubricity additive, or pill.

No Discharge Near Areas of Biological Concern. For those facilities within 1000 meters of an area of biological concern discharge of drilling cuttings is not allowed.

(b) Limitations

Mineral Oil. Limitations that apply to drilling fluids also apply to drill cuttings. Therefore, if mineral oil pills or mineral oil lubricity additives have been introduced to a water-based mud system, cuttings may be discharged if they meet the limitations for toxicity and free oil.

Free Oil. No free oil shall be discharged. Monitoring shall be performed prior to bulk discharges and on each day of discharge using the static (laboratory) sheen test method in accordance with the method provided in Part IV.A.3. The discharge of cuttings that fail the static sheen test is prohibited. The results of each sheen test must be recorded and the number of observations of a sheen must be reported on each monthly DMR.

Toxicity. Discharged cuttings generated using drilling fluids with a daily minimum or a monthly average minimum 96-hour LC50 of less than 30,000 ppm, (v/v) of a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using *Mysidopsis bahia* shall not be discharged.

(c) Monitoring Requirements

Volume. Once per month, the monthly total discharge must be estimated and recorded. The estimated volume of cuttings discharged (bbl/month) shall be reported on the DMR.

3. Produced Water

The discharge of produced water shall be limited and monitored by the permittee as specified in both tables and below.

(a) Prohibitions

No Discharge Near Areas of Biological Concern. For those facilities within 1000 meters of an area of biological concern discharge of produced water is not allowed.

(b) Limitations

Oil and Grease. Produced water discharges must meet both a daily maximum limitation of 42 mg/l and a monthly average limitation of 29 mg/l for oil and grease. A grab sample must be taken at least once per month. The daily maximum samples may be based on the average concentration of four grab samples taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. If more samples are taken, they may exceed the monthly average for any one day, provided that the average of all samples taken meets the monthly limitation. The gravimetric method is specified at 40 CFR part 136. The highest daily oil and grease concentration and the monthly average concentration shall be reported on the monthly DMR.

Toxicity. Produced water discharges must meet a toxicity limitation projected to be the limiting permissible concentration (0.01 x LC50) at the edge of a 100-meter mixing zone. The toxicity limitation will be calculated by EPA based on each facility's site-specific water column conditions and discharge configuration. The methods for this determination are presented in Appendix A of this permit using the Cornell Mixing Zone Expert System (CORMIX). The CORMIX1 (Version 1.4), which is explained in Chapter 4, Section 4.4 of the Ocean Discharge Criteria Evaluation will be used to evaluate the toxicity of the produced water outfalls.

Compliance with the toxicity limitation shall be demonstrated by conducting 96-hour toxicity tests each month using *Mysidopsis bahia* and sheepshead minnows. The method is published in ''Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms'' (EPA/600/4–85/013). The results for both species shall be reported on the monthly DMR. The operator shall also submit a copy of all laboratory reports with the DMR.

(b) Monitoring Requirements

Flow. Once per month, an estimate of the total flow (bbl/month) must be reported on the DMR.

4. Deck Drainage

The discharge of deck drainage shall be limited and monitored by the permittee as specified in both tables and below.

(a) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed on each day of discharge using the visual sheen test method in accordance with the method provided at Part IV.A.4. The discharge of deck drainage that fails the visual sheen test is prohibited. The results of each sheen test must be recorded and the number of observations of a sheen must be reported on each monthly DMR.

(b) Monitoring Requirements

Volume. Once per month, the monthly total discharge (bbls/month) must be estimated and reported on the DMR.

5. Produced Sand

The discharge of produced sand is prohibited under this general permit. Wastes must be hauled to shore for treatment and disposal.

6. Well Treatment Fluids, Completion Fluids, and Workover Fluids

The discharge of well treatment fluids, completion fluids, and workover fluids shall be limited and monitored by the permittee as specified in both tables and below.

(a) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed prior to discharge and on each day of discharge using the static (laboratory) sheen test method in accordance with the method provided at Part IV.A.3. The discharge of well treatment, completion, or workover fluids that fail the static sheen test is prohibited. The results of each sheen test must be recorded and the number of observations of a sheen must be reported on each monthly DMR.

Oil and Grease. Well treatment fluids, completion fluids, and workover fluids discharges must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l limitation for oil and grease. A grab sample must be taken at least once per month when discharging. The daily maximum concentration may be based on the average of four grab samples taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. If more samples are taken, they may exceed the monthly average for any one day, provided that the average of all samples taken meets the monthly limitation. The analytical method is the gravimetric method, as specified at 40 CFR part 136.

Priority Pollutants. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants is prohibited except in trace amounts. Information on the specific chemical composition of any additives containing priority pollutants shall be recorded.

Note: If materials added downhole as well treatment, completion, or workover fluids contain no priority pollutants, the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

(b) Monitoring Requirements

Volume. Once per month, an estimate of the total volume discharged (bbls/month) shall be reported on the DMR.

7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

The discharge of sanitary waste shall be limited and monitored by the permittee as specified in both tables and below.

(a) Prohibitions

Solids. No floating solids may be discharged. Observations must be made once per day, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meals and at the time during maximum estimated discharge. The number of days solids are observed shall be recorded.

(b) Limitations

Residual Chlorine. Total residual chlorine is a surrogate parameter for fecal coliform. Discharges of sanitary waste must contain a minimum of 1 mg residual chlorine/l and shall be maintained as close to this concentration as possible. The approved analytical method is Hach CN–66–DPD. A grab sample must be taken once per month and the concentration reported.

(Exception) Any facility which properly maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested annually for proper operation and the test results maintained at the facility. The operator shall indicate use of an MSD on the monthly DMR.

(c) Monitoring Requirements

Flow. Once per month, the average flow (MGD) must be estimated and recorded for the flow of sanitary wastes.

8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

The discharge of sanitary waste shall be limited and monitored by the permittee as specified in both tables and below.

(a) Prohibitions

Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day when the facility is manned, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed shall be recorded.

(Exception) Any facility which properly maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested annually for proper operation and the test results maintained at the facility. The operator shall indicate use of an MSD on the monthly DMR.

9. Domestic Waste

The discharge of domestic waste shall be limited and monitored by the permittee as specified in both tables and below.

(a) Prohibitions

Solids. No floating solids shall be discharged. In addition, food waste, comminuted or not, may not be discharged within 12 nautical miles from nearest land.

(b) Limitations

Solids. Comminuted food waste which can pass through a 25-mm mesh screen (approximately 1 inch) may be discharged 12 or more nautical miles from nearest land.

(c) Monitoring Requirements

Solids. An observation must be made during daylight in the vicinity of domestic waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

10. Miscellaneous Discharges

Desalination Unit Discharge; Blowout Preventer Fluid; Uncontaminated Ballast Water; Uncontaminated Bilge Water; Mud, Cuttings, and Cement at the Seafloor; Uncontaminated Seawater; Boiler Blowdown; Source Water and Sand; Diatomaceous Earth Filter Media.

The discharge of miscellaneous discharges shall be limited and monitored by the permittee as specified in both tables and below.

(a) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the visual sheen test method once per day when discharging on the surface of the receiving water or by use of the static sheen method at the operator's option. Both tests shall be conducted in accordance with the methods presented at IV.A.3 and IV.A.4. Discharge is limited to those times that a visual sheen observation is possible. The number of days a sheen is observed must be recorded.

(Exception) Discharge is not restricted to periods when observation is possible; however, the static (laboratory) sheen test method must be used during periods when observation of a sheen is not possible, such as at night or during inclement conditions.

Section C. Other Discharge Limitations

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam from any source other than in trace amounts.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds as a part of any waste streams authorized in this permit.

3. Dispersants, Surfactants, and Detergents

The facility operator shall minimize the discharge of dispersants, surfactants, and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and MMS. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. The restriction is imposed because detergents disperse and emulsify oil, potentially increasing toxic impacts and making the detection of a discharge of free oil more difficult.

4. Rubbish, Trash, and Other Refuse

The discharge of any solid material not authorized in the permit (as described above) is prohibited.

This permit includes limitations set forth by the U.S. Coast Guard in regulations implementing Annex V of MARPOL 73/78 for domestic waste disposal from all fixed or floating offshore platforms and associated vessels engaged in exploration or exploitation of seabed mineral resources (33 CFR 151). These limitations, as specified by Congress (33 U.S.C. 1901, the Act to Prevent Pollution from Ships), apply to all navigable waters of the United States.

This permit prohibits the discharge of ''garbage'' including food wastes, within 12 nautical miles from nearest land. Comminuted food waste (able to pass through a screen with a mesh size no larger than 25 mm, approx. 1 inch) may be discharged when 12 nautical miles or more from land. Graywater, drainage from dishwater, shower, laundry, bath, and washbasins are not considered garbage within the meaning of Annex V. Incineration ash and non-plastic clinkers that can pass through a 25-mm mesh screen may be discharged beyond 3 miles from nearest land. Otherwise, ash and non-plastic clinkers may be discharged beyond 12 nautical miles from nearest land.

5. Areas of Biological Concern

There shall be no discharge of drilling muds, drill cuttings and produced water within 1000 meters of Areas of Biological Concern. If at any time it is determined that a facility is located within 1000 meters of an area of biological concern, the operator shall immediately cease discharge from these outfalls in the area and shall file an application for an individual permit as provided in 40 CFR 122.28(b)(3). The operator may not resume discharging from these outfalls until an individual permit has been issued.

Part II. Standard Conditions for NPDES Permits

Section A. Introduction and General Conditions

In accordance with the provisions of 40 CFR Part 122.41, *et. seq.*, this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended, as well as ALL applicable regulations.

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply and obtain an individual NPDES permit.

2. Penalties for Violations of Permit Conditions—33 U.S.C. 1319(c)

(a) Criminal Penalties

(1) Negligent Violations. The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The Act provides that any person who knowingly violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment. The Act provides that any person who knowingly violates permit conditions implementing Section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000 per day of violation for individuals or up to $1 million for organizations, or by imprisonment for not more than 15 years, or both.

(4) False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of

such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309(c) of the Clean Water Act.)

(b) Civil Penalties—33 U.S.C. 1319(d)

The Act provides that any person who violates a permit condition implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for such violation. A single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(c) Administrative Penalties

The Act at Section 309 allows that the Regional Administrator may assess a Class I or Class II civil penalty for violations of Section 301, 302, 306, 307, 308, 318, or 405 of the Act. A Class I penalty may not exceed $10,000 per violation nor shall the maximum amount exceed $25,000. A Class II penalty may not exceed $10,000 per day for each day during which the violation continues except that the maximum amount shall not exceed $125,000. An upset that leads to violations of more than one pollutant parameter will be treated as a single violation.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Permit Flexibility

These permits may be modified, revoked and reissued for the causes set forth at 40 CFR 122.62. The permits may be terminated for the following reasons (see 40 CFR 122.62):

(a) Violation of any terms or conditions of this permit;

(b) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

(c) A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or

(d) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. Toxic Pollutants

Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6. Civil and Criminal Liability

Except as provided in permit conditions on ''Bypassing'' and ''Upsets'' (see II.B.3 and II.B.4), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance with permit conditions. Any false or misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable CFR regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, any exclusive privileges, authorize any injury to private property, any invasion of personal rights, nor any infringement of Federal, state, or local laws or regulations.

10. Onshore or Offshore Construction

This permit does not authorize or approve the construction of any onshore or offshore physical structure of facilities or the undertaking of any work in any waters of the United States.

11. Severability

The provisions of this permit are severable. If any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

12. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this permit.

Section B. Proper Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

(a) Definitions

(1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(2) Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations

The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section B.3(c) and 3(d) below.

(c) Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, submit notice of an unanticipated bypass as required in Section D.7 (24-hour reporting).

(d) Prohibition of Bypass

(1) Bypass is prohibited and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required under Section B.3(c).

(2) The Regional Administrator may approve an anticipated bypass after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Section B.3(d)(1).

4. Upset Conditions

(a) Definition

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of An Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section B.4(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Section D.7 below; and,

(4) The permittee complied with any remedial measures required by Section A.3, above.

(d) Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

Section C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

2. Discharge Rate/Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected, maintained, and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ±10% from true discharge rates throughout the range of expected discharge volumes.

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit in Part IV, below.

4. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or imprisonment for not more than 2 years, or both.

5. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit for a period of at least 3 years from the date of the sample, measurement, or report. This period may be extended by request of the Regional Administrator at any time. The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable.

6. Record Contents

Records of monitoring information shall include:

(a) The date, exact place, and time of sampling or measurements;

(b) The individual(s) who performed the sampling or measurements;

(c) The date(s) analyses were performed;

(d) The individual(s) who performed the analyses;

(e) The analytical techniques or methods used; and

(f) The results of such analyses.

7. Inspection and Entry

The permittee shall allow the Regional Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by the law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(a) The alteration or addition to a facility permitted under the existing source general permit may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b) (58 FR 12454; final effluent guidelines for the offshore subcategory); or

(b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1) (48 FR 14153, April 1, 1963, as amended at 49 FR 38049, September 26, 1984).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person. Any new owner or operator shall submit a notice of intent to be covered under this general permit according to procedures presented at Part I.A.3.

4. Monitoring Reports

See Part III.A of this permit.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased monitoring frequency also shall be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment (this includes any spill that requires reporting to the state regulatory authority). Information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(b) Any upset which exceeds any effluent limitation in the permit;

(c) Violations of a maximum daily discharge limitation for any of the pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

The reports should be made to Region 4 by telephone at (404) 562–9746. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Part II.D.7 at the time monitoring reports are submitted. The reports shall contain the information listed at II.D.7.

9. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

For any toxic pollutant that is not limited in this permit, either as an additive itself or as a component in an additive formulation, the permittee shall notify the Regional Administrator as soon as he knows or has reason to believe that:

(a) Any activity has occurred or will occur which would result in the discharge of such toxic pollutants on a routine or frequent basis, if that discharge will exceed the highest of the ''notification levels'' described at 40 CFR 122.42(a)(1)(i) and (ii);

(b) Any activity has occurred or will occur which would result in any discharge of such toxic pollutants on a non-routine or infrequent basis, if that discharge will exceed the highest of the ''notification levels'' described at 40 CFR 122.42(a)(2)(i) an (ii).

11. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit an NOI to be covered or must apply for a new permit. Continuation of expiring permits shall be governed by regulations at 40 CFR Part 122.6 and any subsequent amendments.

12. Signatory Requirements

All NOIs, applications, reports, or information submitted to the Director shall be signed and certified as required at 40 CFR 122.22.

(a) All permit applications shall be signed as follows:

(1) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship—by a general partner or the proprietor, respectively.

(b) Authorized Representative. All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Regional Administrator.

(c) Changes to Authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or application to be signed by an authorized representative.

(d) Certification. Any person signing a document under this section shall make the following certification: ''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

13. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the Regional Office. As required by the Act, the name and address of any permit applicant or permittee, permit applications, permits, and effluent data shall not be considered confidential.

Part III. Monitoring Reports and Permit Modification

Section A. Monitoring Reports

The operator of each lease block shall be responsible for submitting monitoring results for each facility within each lease block. If there is more than one facility in each lease block (platform, drilling ship, semi-submersible), the discharge shall be designated in the following manner: 101 for the first facility; 201 for the second facility; 301 for the third facility, etc.

Monitoring results obtained for each month shall be summarized for that month and reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1), postmarked no later than the 28th day of the month following the completed calendar month. (For example, data for January shall be submitted by February 28.) Signed copies of these and all other reports required by Part II.D shall be submitted to the following address:

Director, Water Management Division, Clean Water Act Enforcement Section, U.S. EPA, Region 4, Atlanta Federal Center 61 Forsyth Street, S.W., Atlanta, GA 30303–3104

All laboratory reports submitted with DMRs should clearly indicate the permit number, outfall number, and any other identification information necessary to associate the report with the correct facility, waste stream, and outfall.

If no discharge occurs during the reporting period, sampling requirements of this permit do not apply. The statement ''No Discharge'' shall be written on the DMR form. If, during the term of this permit, the facility ceases discharge to surface waters, the Regional Director shall be notified immediately upon cessation of discharge. This notification shall be in writing.

Section B. Permit Modification

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation, or sludge disposal requirement issued or approved under sections 301(b)(2)(C) and (D), 307(a)(2), and 405(d)(2)(D) of the Act, as amended, if the effluent standard or limitation, or sludge disposal requirement so issued or approved:

(a) Contains different conditions or is otherwise more stringent than any conditions in the permit; or

(b) Controls any pollutant or disposal method not addressed in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

Part IV. Test Procedures and Definitions

Section A. Test Procedures

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. Drilling Fluids Toxicity Test

The approved sampling and test methods for permit compliance are provided in the final effluent guidelines published at 58 FR 12507 on March 4, 1993 as Appendix 2 to Subpart A of Part 435.

3. Static (Laboratory) Sheen Test

The approved sampling and test methods for permit compliance are provided in the final effluent guidelines published at 58 FR 12506 on March 4, 1993 as Appendix 1 to Subpart A.

4. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. A sheen is defined as a ''silvery'' or ''metallic'' sheen, gloss, or increased reflectivity; visual color; iridescence; or oil slick on the surface (see 58 FR 12507). The operator must conduct a visual sheen test only at times when a sheen could be observed. This restriction eliminates observations at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (*e.g.*, during rain or rough seas, etc.). Certain discharges can only occur if a visual sheen test can be conducted.

The observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made both during discharge and 5 minutes after discharge has ceased.

5. Produced Water Acute Toxicity Test

The method for determining the 96-hour LC50 for effluents is published in ''Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms'' (EPA/600/4–85/013). The species to be used for compliance testing for this permit are *Mysidopsis bahia* and sheepshead minnows (*Cyprinodon variegatus*).

Section B. Definitions

1. *Act* means the Clean Water Act (CWA), as amended (33 U.S.C. 1251 *et seq*).

2. *Administrator* means the Administrator of EPA, Region 4, or an authorized representative.

3. *Areas of Biological Concern* for waters within the territorial seas (shoreline to 3-miles offshore) are those defined as ''no activity zones'' for biological reasons by the states of Alabama, Florida or Mississippi. For offshore waters seaward of three miles, areas of biological concern include ''no activity zones'' defined by the Department of the Interior (DOI) for biological reasons, or identified by EPA in consultation with the DOI, the states, or other interested federal agencies, as containing biological communities, features or functions that are potentially sensitive to discharges associated with the oil and gas industry. Areas of Biological Concern include, but are not limited to, the following: Southwest Rock (30°06.1′ N, 88°12.3′ W), Southeast Banks (30°00.9′ N; 87°57.1′ W); 17 Fathom Hole (29°55.6′ N 88°03.4′ W) and lease blocks with Pinnacle Trend Features. These areas are geographically and in greater detail in Appendix B. EPA may, from time to time, identify additional Areas of Biological Concern.

4. *Applicable Effluent Standards and Limitations* means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

5. *Average Daily Discharge Limitation* means the highest allowable average of discharges over a 24-hour period, calculated as the sum of all discharges or concentrations measured divided by the number of discharges or concentrations measured that day.

6. *Average Monthly Discharge Limitation* means the highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all ''daily discharges'' measured during a calendar month divided by the number of discharges measured that month. The limitation may be the average of discharge rates or concentrations.

7. *Batch or Bulk Discharge* is any discharge of a discrete volume or mass of effluent from a pit, tank, or similar container that occurs on a one-time, infrequent, or irregular basis.

8. *Blowout-Out Preventer Control Fluid* means fluid used to actuate the hydraulic equipment on the blow-out preventer or subsea production wellhead assembly.

9. *Boiler Blowdown* means discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

10. *Bulk Discharge* means any discharge of a discrete volume or mass of effluent from a pit tank or similar container that occurs on a one-time, infrequent, or irregular basis.

11. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

12. *Clinkers* are small lumps of residual material left after incineration.

13. *Completion Fluids* are salt solutions, weighted brines, polymers and various additives used to prevent damage to the wellbore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

14. *Daily Average Discharge* (also known as monthly average) limitations means the highest allowable average daily discharge(s) over a calendar month, calculated as the sum of all daily discharge(s) measured during a calendar month divided by the number of daily discharge(s) measured during that month.

15. *Daily Discharge* means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant or waste stream discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be the average (weighted by flow value) of all samples collected during that sampling day.

16. *Daily Maximum Discharge Limitations* are the highest allowable discharge rate or concentration measured during a calendar day.

17. *Deck Drainage* is all waste resulting from platform washings, deck washings, deck area spills, equipment washings, rainwater, and runoff from curbs, gutters, and drains, including drip pans and wash areas.

18. *Desalination Unit Discharge* means waste water associated with the process of creating freshwater from seawater.

19. *Development Drilling* means the drilling of wells required to efficiently produce a hydrocarbon formation or formations.

20. *Diatomaceous Earth Filter Media* is the filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

21. *Diesel Oil* is the distillate fuel oil typically used in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of any particular operation under this permit, diesel oil shall refer to the fuel oil present on the facility.

22. *Domestic Waste* is the discharge from galleys, sinks, showers, safety showers, eye wash stations, hand washing stations, fish cleaning stations, and laundries.

23. *Drill Cuttings* are particles generated by drilling into the subsurface geological formations including cured cement carried to the surface with the drilling fluid.

24. *Drilling Fluids* are any fluids sent down the hole, including drilling muds and any specialty products, from the time a well is begun until final cessation of drilling in that hole.

25. *End of Well Sample* means the sample taken after the final log run is completed and prior to bulk discharge.

26. *Excess Cement Slurry* means the excess mixed cement, including additives and wastes from equipment washdown after a cementing operation.

27. *Existing Sources* are facilities conducting exploration activities and those that have commenced development or production activities that were permitted as of the effective

date of the Offshore Guidelines (March 4, 1993).

28. *Free Oil* is oil that causes a sheen, streak, or slick on the surface of the test container or receiving water.

29. *Garbage* means all kinds of victual, domestic, and operational waste ''generated during the normal operation of the ship and liable to be disposed of continuously or periodically'' (see MARPOL 73/78 regulations).

30. *Grab Sample* means an individual sample collected in less than 15 minutes.

31. *Graywater* is drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and drainage from cargo areas (see MARPOL 73/78 regulations).

32. *Inverse Emulsion Drilling Fluids* are oil-based drilling fluids which also contain large amounts of water.

33. *Live Bottom Areas* are those areas that contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascideians sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with fishes and other fauna.

34. *Maximum Hourly Rate* is the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

35. *Muds, Cuttings, and Cement at the Seafloor* means discharges that occur at the seafloor prior to installation of the marine riser and during marine riser disconnect, well abandonment, and plugging operations.

36. *National Pollutant Discharge Elimination System* (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under sections 307, 318, 402, 403, and 405 of the Act.

37. *New Source* means any facility or activity of this subcategory that meets the definition of ''new source'' under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following defintions: (i) The term water area as used in the term ''site'' in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities, (ii) the term significant site preparation work as used in 40 CFR 122.29 shall mean the process of surveying, clearing, or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

38. No Activity Zones include those areas identified by MMS where no structures, drilling rigs, or pipelines will be allowed. These zones are identified as lease stipulations in U.S. Department of the Interior, MMS, August 1990, Environmental Impact Statement for Sales 131, 135, and 137 Western, Central, and Eastern Gulf of Mexico. Additional no activity zones may be identified by MMS during the life of this permit, and by the States of Alabama, Mississippi and Florida within their territorial waters (up to 3 miles offshore) where no structures, drilling rigs, or pipelines will be allowed.

39. No Discharge Areas are areas specified by EPA where discharge of pollutants may not occur.

40. Non-Operational Leases are those leases on which no discharge has taken place within 2 years prior to the effective date of the new general permits.

41. Operating Facilities are leases on which a discharge has taken place within 2 years of the effective date of the new general permits.

42. Packer Fluids are low solids fluids between the packer, production string, and well casing. They are considered to be workover fluids.

43. Priority Pollutants are the 126 chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act and 40 CFR 401.15.

44. Produced Sand is sand and other solids removed from the produced waters. Produced sand also includes desander discharge from produced water waste stream and blowdown of water phase from produced water treating systems.

45. Produced Water is water and particulate matter associated with oil and gas producing formations. Produced water includes small volumes of treating chemicals that return to the surface with the produced fluids and pass through the produced water treating system.

46. *Sanitary Waste* means human body waste discharged from toilets and urinals.

47. *Severe Property Damage* means substantial physical damage to property, damage to the treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

48. *Sheen* means a silvery or metallic sheen, gloss, or increased reflectivity; visual color; iridescence; or oil slick on the water surface.

49. *Source Water and Sand* are the water and entrained solids brought to the surface from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery.

50. *Spotting* means the process of adding a lubricant (spot) downhole to free stuck pipe.

51. *Territorial Seas* means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

52. *Trace Amounts* means that if materials added downhole as well treatment, completion, or workover fluids do not contain priority pollutants then the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

53. *Uncontaminated Ballast/Bilge water* means seawater added or removed to maintain proper draft that does not come in contact with surfaces that may cause contamination.

54. *Uncontaminated Seawater* means seawater that is returned to the sea without the addition of chemicals. Included are (1) discharges of excess seawater that permit the continuous operation of fire control and utility lift pumps, (2) excess seawater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) seawater used to pressure test piping, and (5) once through non-contact cooling water.

55. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

56. *Well treatment fluids* are any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

57. *Workover fluids* are salt solutions, weighted brines, polymers, and other specialty additives used in a producing well to allow safe repair and

maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string, and well casing are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

58. The term MGD means million gallons per day.

59. The term mg/l means milligrams per liter or parts per million (ppm).

60. The term gu/l means micrograms per liter or part per billion (ppb).

Existing Sources

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT

Discharge	Regulated & monitored discharge parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
Drilling Fluids	Oil-based Drilling Fluids.	No discharge.			
	Oil-contaminated Drilling Fluids.	No discharge.			
	Drilling Fluids to Which Diesel Oil has been Added.	No discharge.			
	Mercury and Cadmium in Barite.	No discharge of drilling fluids if added barite contains Hg in excess of 1.0 mg/kg or Cd in excess of 3.0 mg/kg (dry wt).	Once per new source of barite used.	Flame and flameless AAS..	mgHg and mg Cd/kg in stock barite.
	Toxicity [a]	30,000 ppm daily minimum. 30,000 ppm monthly average minimum.	Once/month Once/end of well [b] Once/month.	Grab/96-hr LC50 using *Mysidopsis bahia;* Method at 58 FR 12507.	Minimum LC50 of tests performed and monthly average LC50.
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Maximum Discharge Rate.	1,000 barrels/hr	Once/day	Estimate	Max. hourly rate in bbl/hr.
	Mineral Oil	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.			
	Drilling Fluids Inventory.	Record	Once/well	Inventory	Chemical constituents.
	Volume	Report	Once/month.	Estimate	Monthly total in bbl/month.
	Within 1000 Meters of an Areas of Biological Concern (ABC).	No discharge.			
Drill Cuttings.	Note: Drill cuttings are subject to the same limitations/prohibitions as drilling fluids except *Maximum Discharge Rate.*				
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Volume	Report	Once/month.	Estimate	Monthly total in bbl/month.
Produced Water	Oil and Grease.	42 mg/l daily maximum and 29 mg/l monthly average.	Once/month [c]	Grab/Gravimetric.	Daily max. and monthly avg.
	Toxicity	Acute toxicity (LC50); critical dilution as specified by the requirements at Part I.B.3(a) and Appendix A of this permit..	Once/month	Grab/96-hour LC50 using *Mysidopsis bahia* and sheepshead minnows (Method in EPA/600/4–85/013)..	Minimum LC50 for both species and full laboratory report.
	Flow (bbl/month)		Once/month.	Estimate	Monthly rate.
	Within 1000 meters of an Area of Biological Concern (ABC).	No discharge.			
Deck Drainage.	Free Oil	No free oil	Once/day when discharging [d].	Visual sheen	Number of days sheen observed.
	Volume (bbl/month)		Once/month.	Estimate	Monthly total.
Produced Sand.	No Discharge..				

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT—Continued

Discharge	Regulated & monitored discharge parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
Well Treatment, Completion, and Workover Fluids (includes packer fluids)[e].	Free Oil Oil and Grease	No free oil 42 mg/l daily maximum and 29 mg/l monthly average.	Once/day when discharging. Once/month.	Static sheen Grab/Gravimetric	Number of days sheen observed. Daily max. and monthly avg.
	Priority Pollutants	No priority pollutants		Monitor added materials.	
	Volume (bbl/month)		Once/month.	Estimate	Monthly total.
Sanitary Waste (Continuously manned by 10 or more persons)[f].	Solids Residual Chlorine Flow (MGD)	No floating solids At least (but as close to) 1 mg/l.	Once/day, in daylight Once/month Once/month	Observation Grab/Hach CN–66-DPD. Estimate	Number of days solids observed Concentration
Sanitary Waste (Continuously manned by 9 or fewer persons or intermittently by any)[f].	Solids	No floating solids	Once/day, in daylight	Observation	Number of days solids observed.
Domestic Waste	Solids	No floating solids; no food waste within 12 miles of land; comminuted food waste smaller than 25-mm beyond 12 miles.	Once/day following morning or midday meal at time of maximum expected discharge.	Observation	Number of days solids observed.
Miscellaneous Discharges—Desalination Unit, Blowout Preventer, Fluid, Uncontaminated Ballast/Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Boiler Blowdown, Source Water and Sand, Diatomaceous Earth Filter Media.	Free Oil	No free oil	Once/day when discharging.	Visual sheen	Number of days sheen observed.

[a] Toxicity test to be conducted using suspended particulate phase (SPP) of a 9:1 seawater:mud dilution. The sample shall be taken beneath the shale shaker, or if there are no returns across the shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[b] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[c] The daily maximum concentration may be based on the average of up to four grab sample results in the 24 hour period.

[d] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[e] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

[f] Any facility that properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

New Sources

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT

Discharge	Regulated & monitored discharge parameter	Discharge limitation/prohibition	Monitoring Requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
Drilling Fluids	Oil-based Drilling Fluids.	No discharge.			

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT—Continued

Discharge	Regulated & monitored discharge parameter	Discharge limitation/prohibition	Monitoring Requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
	Oil-contaminated Drilling Fluids.	No discharge.			
	Drilling Fluids to Which Diesel Oil has been Added.	No discharge.			
	Mercury and Cadmium in Barite.	No discharge of drilling fluids if added barite contains Hg in excess of 1.0 mg/kg or Cd in excess of 3.0 mg/kg (dry wt).	Once per new source of barite used.	Flame and flameless AAS.	mg Hg and mg Cd/kg in stock barite.
	Toxicity[a]	30,000 ppm daily minimum. 30,000 ppm monthly average minimum.	Once/month Once/end of well[b]. Once/month	Grab/96-hr LC50 using *Mysidopsis bahia;* Method at 58 FR 12507.	Minimum LC50 of tests performed and monthly average LC50
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Maximum Discharge Rate.	1,000 barrels/hr	Once/day	Estimate	Max. hourly rate in bbl/hr.
	Mineral Oil	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.			
	Drilling Fluids Inventory.	Record	Once/well	Inventory	Chemical constituents
	Volume	Report	Once/month	Estimate	Monthly total in bbl/month
	Within 1000 Meters of an Areas of Biological Concern (ABC).	No discharge.			
Drill Cuttings	Note: Drill cuttings are subject to the same limitations/prohibitions as drilling fluids except *Maximum Discharge Rate.*				
	Free Oil	No free oil	Once/day prior to discharge.	Static sheen; Method at 58 FR 12506.	Number of days sheen observed.
	Volume	Report	Once/month	Estimate	Monthly total in bbl/month.
Produced Water	Oil and Grease	42 mg/l daily maximum and 29 mg/l monthly average.	Once/month[c]	Grab/Gravimetric	Daily max. and monthly avg.
	Toxicity	Acute toxicity (LC50); critical dilution as specified by the requirements at Part I.B.3(a) and Appendix A of this permit.	Once/month	Grab/96-hour LC50 using *Mysidopsis bahia* and sheepshead minnows (Method in EPA/600/4–85/013).	Minimum LC50 for both species and full laboratory report.
	Flow (bbl/month)	....	Once/month	Estimate	Monthly rate.
	Within 1000 meters of an Area of Biological Concern (ABC).	No discharge.			
Deck Drainage	Free Oil	No free oil	Once/day when discharging[d].	Visual sheen	Number of days sheen observed.
	Volume (bbl/month)	....	Once/month	Estimate	Monthly total.
Produced Sand	No Discharge.				
Well Treatment, Completion, and Workover Fluids (includes packer fluids)[e].	Free Oil	No free oil	Once/day when discharging.	Static sheen	Number of days sheen observed.
	Oil and Grease	42 mg/l daily maximum and 29 mg/l monthly average.	Once/month	Grab/Gravimetric	Daily max. and monthly avg.
	Priority Pollutants	No priority pollutants	....	Monitor added materials.	
	Volume (bbl/month)	....	Once/month	Estimate	Monthly total.
Sanitary Waste (Continuously manned by 10 or more persons)[f].	Solids	No floating solids	Once/day, in daylight	Observation	Number of days solids observed.
	Residual Chlorine	At least (but as close to) 1 mg/l.	Once/month	Grab/Hach CN–66–DPD.	Concentration.
	Flow (MGD)	....	Once/month	Estimate	

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS, AND MONITORING REQUIREMENTS FOR THE EASTERN GULF OF MEXICO NPDES GENERAL PERMIT—Continued

Discharge	Regulated & monitored discharge parameter	Discharge limitation/prohibition	Monitoring Requirement		
			Measurement frequency	Sample type/method	Recorded/reported value
Sanitary Waste (Continuously manned by 9 or fewer persons or intermittently by any) [f].	Solids	No floating solids	Once/day, in daylight	Observation	Number of days solids observed.
Domestic Waste	Solids	No floating solids; no food waste within 12 miles of land; comminuted food waste smaller than 25-mm beyond 12 miles.	Once/day following morning or midday meal at time of maximum expected discharge.	Observation	Number of days solids observed.
Miscellaneous Discharges—Desalination Unit, Blowout Preventer, Fluid, Uncontaminated Ballast/Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Boiler Blowdown, Source Water and Sand, Diatomaceous Earth Filter Media.	Free Oil	No free oil	Once/day when discharging.	Visual sheen	Number of days sheen observed.

[a] Toxicity test to be conducted using suspended particulate phase (SPP) of a 9:1 seawater:mud dilution. The sample shall be taken beneath the shale shaker, or if there are no returns across the shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[b] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[c] The daily maximum concentration may be based on the average of up to four grab sample results in the 24 hour period.

[d] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[e] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

[f] Any facility that properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

Appendix A

Effluent concentrations at the edge of a 100-m mixing zone will be modeled by EPA for each *produced water* outfall listed in an operator's notice of commencement of production operations. This projected effluent concentration will be used to calculate the permit limitation for produced water toxicity (0.01 x projected effluent concentration). The discharge will be modeled using each facility's measured water column conditions and discharge configurations as input for the CORMIX expert system for hydrodynamic mixing zone analysis.

The notice of commencement of production operations will be accompanied by a completed CORMIX input parameter table presented as Table A–1. The input parameters required are the following.

Anticipated average discharge rate (bbl/day)
Water depth (meters)
Discharge pipe location in the water column (meters from surface or bottom)
Discharge pipe orientation with respect to the prevailing current (degrees; 0° is coflowing)
Discharge pipe opening diameter (meters)

These parameters are site-specific parameters that the operator must determine through monitoring or measurement and certify as true to the best of their knowledge. All other input parameters for the CORMIX model are established as the following.

Discharge density: 1070.2 kg/m^3
Discharge concentration: 100%
Legal mixing zone: 100 meters
Darcy-Wiesbach constant: 0.2
Current speed: 5 cm/sec
Discharge pipe orientation: Coflowing with current
Linear water column density profile;
Surface density: 1,023.0 kg/m^3
Density gradient: 0.163 kg/m^3/m

The Region will conduct the model using the operator's input parameters and report the toxicity limitation to the operator. If the parameters supplied by the operator change during the life of the permit (*e.g.*, average discharge rate increases or decreases, a change in discharge pipe orientation, etc.), the operator should submit the new input parameters to the Region so that a new toxicity limitation can be calculated.

Compliance with the toxicity limitation will be demonstrated by conducting 96-hour toxicity tests using mysids (*Mysidopsis bahia*) and sheepshead minnows (*Cyprinodon variegatus*) each month. The LC50 for each species will be reported on the DMR and a copy of the complete laboratory report shall be submitted.

TABLE A–1. CORMIX1 INPUT PARAMETERS FOR TOXICITY LIMITATION CALCULATION

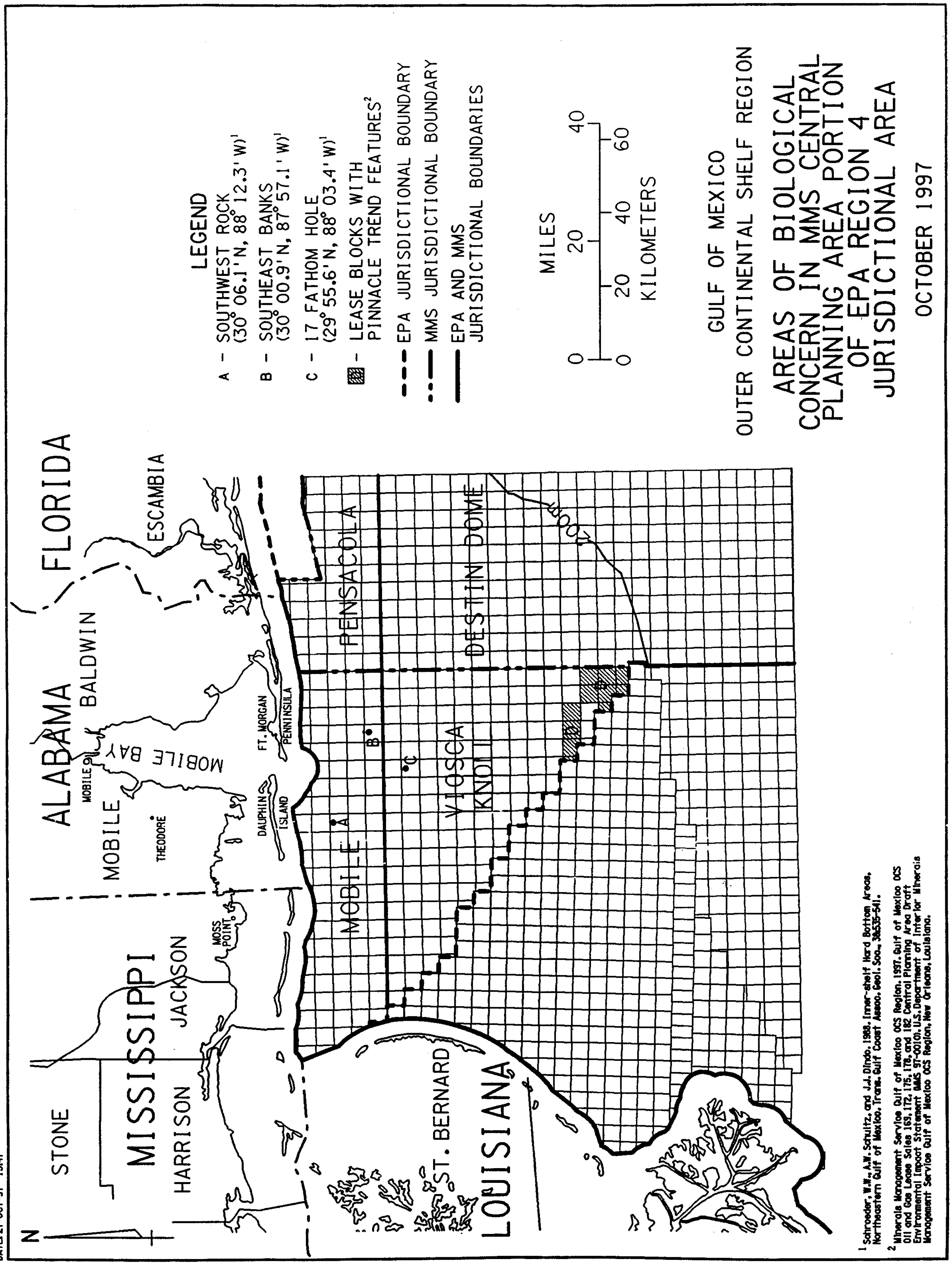
Permit number:	GMG28 ________
Company:	________

TABLE A–1. CORMIX1 INPUT PARAMETERS FOR TOXICITY LIMITATION CALCULATION—Continued

Contact name/Phone number:	________	
____________________________		
Lease block/number:	____________	
Facility name:	__________	
Parameter Units	Units	
Discharge Rate	__________ Average bbl/day	
Water depth	__________ meters	
Discharge pipe location in the water column		
____________________________		meters from _____ water surface, or _____ seafloor
Discharge pipe orientation with respect to the seafloor:		
____________________________	degrees	(90° is directed toward the surface) (−90° is directed toward the seafloor)
Discharge pipe opening diameter:		
____________________________	meters	

BILLING CODE: 6560–50–P

Appendix B



[FR Doc. 98–245 Filed 1–6–98; 8:45 am]

BILLING CODE 6560–50–C

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 30, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 6, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0678.

Title: Commission's Rules and Regulations for Satellite Application and Licensing Procedures.

Form No.: FCC Form 312.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for profit; not-for-profit institutions; federal government.

Number of Respondents: 1,310.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Cost to Respondents: $8,963,447.

Total Annual Burden: 2,620 hours.

Needs and Uses: Rules, policies and form changes have been adopted to implement the World Trade Organization (WTO) Basic Telecommunications Agreement. The proposals permit non-U.S. licensed satellite services to be considered in the United States. Non-U.S. licensed entities would be permitted to file Letters of Intent for satellite space stations. Modifications to FCC Form 312 have been adopted to incorporate questions for non-U.S. licensed entities and to correct omissions on previous versions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–275 Filed 1–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Rescission of the Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Rescission of statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its outdated Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks (Policy Statement).

EFFECTIVE DATE: The Policy Statement is rescinded effective December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, or Sandy Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street, N.W., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that its Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks (Policy Statement) is obsolete. The Policy Statement was first adopted by the FDIC Board of Directors on January 16, 1990, and published on January 22, 1990 (55 FR 2142).

The Policy Statement strongly encourages all FDIC-supervised banks to have a financial statement audit as their external auditing program. Nevertheless, the Policy Statement recognizes that the board of directors or audit committee at some institutions may determine that a financial statement audit does not best meet the institution's needs for an external auditing program. It recommended as an alternative to an audit for banks not subject to the audit requirement in Section 36 of the Federal Deposit Insurance Act (FDI Act) that the board of directors or audit committee consider having certain specified auditing procedures performed by an independent public accountant as its external auditing program. However, the FDIC has now determined that the specific procedures recommended in the Policy Statement to be performed by an external auditor no longer constitute an acceptable alternative to a financial statement audit nor is the performance of these procedures the best method for meeting the FDIC's supervisory objectives with respect to external auditing work. The FDIC believes that its safety and soundness goals would be better satisfied by emphasizing internal control over financial reporting in external auditing programs.

In addition, the American Institute of Certified Public Accountants (AICPA), which establishes standards for auditing and other professional services rendered by certified public accountants, issued its Statement on Standards for Attestation Engagements No. 4, ''Agreed-Upon Procedures Engagements,'' in 1995. Under this revised standard, an independent public accountant may perform an attestation engagement only if the accountant is attesting to a management assertion ''that is capable of evaluation against reasonable criteria that either have been established by a recognized body'' or ''is capable of reasonably consistent estimation or measurement using such criteria.'' Since no part of the Policy Statement requires a management assertion, and there are no reasonable criteria against which to evaluate the results of any of the specified auditing procedures that an independent public accountant would perform, the Policy Statement is unworkable under the AICPA's current professional standards. Accordingly, the FDIC is rescinding the Policy Statement.

Expected Proposal

For many years, the FDIC examination staff has been reviewing the internal auditing and external auditing programs of institutions because these programs enhance the ability of an institution to detect and correct any potentially serious problems that may exist. On November 16, 1988, the FDIC Board of Directors adopted its Policy Statement Regarding Independent External Auditing Programs of State Nonmember Banks (published on November 28, 1988 (53 FR 47871), and amended on June 24, 1996, (61 FR 32438)), in which the FDIC strongly encourages each state nonmember bank to adopt an adequate external auditing program. The policy statement states that any institution which has an annual audit of its financial statements by an independent public accountant will be considered to have an adequate external auditing program. However, it also provided certain acceptable alternatives, including a report on the balance sheet or an analysis of internal control, that an institution might choose should its board of directors determine that an annual audit by an independent public accountant does not best suit its needs. This policy statement remains outstanding.

For some time, the staffs of the other banking agencies have also encouraged each of their supervised institutions to adopt an appropriate annual external auditing program. Earlier this year, FDIC staff and the staffs of these agencies began preparing a proposed uniform interagency policy statement on external auditing programs for banks and thrifts. This proposal, which is expected to be published for notice and comment by the Federal Financial Institutions Examination Council (FFIEC), will encourage each institution to adopt an external auditing program that includes an annual audit of its financial statements by an independent public accountant. If an institution's board of directors or audit committee determines that an audit does not best meet the institution's needs, the proposal is expected to provide two acceptable alternatives to an audit for banks not subject to the audit requirement in Section 36 of the Federal Deposit Insurance Act (FDI Act). The alternatives consist of a report on the institution's balance sheet or an attestation report on internal control over specified schedules of its regulatory reports. Each should be performed by an independent public accountant.

Report on the Balance Sheet Audit. As one alternative to a financial statement audit, the proposal will suggest that an institution's board of directors or its audit committee consider engaging an independent public accountant to examine the assets, liabilities, and equity of the institution under generally accepted auditing standards (GAAS) and to opine on the fairness of the presentation on the balance sheet. In these circumstances, the accountant would not be expected to provide an opinion on the fairness of the presentation of the institution's income statement, statement of changes in equity capital, or statement of cash flows.

Attestation Report on Internal Control Assertion. As the other alternative, the proposal will recommend that an institution's board or audit committee consider engaging an independent public accountant to provide a report attesting to management's assertion concerning the effectiveness of internal control over financial reporting on certain schedules of its regulatory reports, particularly those relating to loans and securities. Under this alternative, management initially would have to review its internal control over the preparation of these schedules and document this review. Management would then provide a written assertion to the independent public accountant stating whether it believes its internal control in this area is effective. The independent public accountant would examine management's assertion and provide an appropriate attestation report.

This alternative would not provide assurance that the specific dollar amounts reported on the regulatory report are accurate. However, it would provide reasonable assurance about the reliability of management's assertion concerning the establishment of an internal control structure and procedures over financial reporting on the specified report schedules and whether that control is effective.

Interim Recommendation

The FDIC suggests that, until a new policy statement regarding an annual external auditing program is adopted, any institution which does not have an annual audit of its financial statements by an independent public accountant should consider having one of the alternatives described above performed by an independent public accountant as its external auditing program.

Nevertheless, the FDIC understands that some states have adopted the procedures from the obsolete Policy Statement on External Auditing Procedures for State Nonmember Banks as the state-required external auditing program. Until a new policy statement is effective, if an institution does not have an audit of its financial statements and is based in a state that has a state-required external auditing program (e.g., a directors' examination), the institution would not normally be expected to incur the cost of one of the alternatives in addition to its state-required program.

For the above reasons, the Policy Statement is rescinded.

By order of the Board of Directors.

Dated at Washington, D.C., this 23rd day of December, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–347 Filed 1–6–98; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations for Members of the U.S. Preventive Services Task Force

The Agency for Health Care Policy and Research (AHCPR) is reconvening the U.S. Preventive Services Task Force (the Task Force) and inviting nominations of qualified individuals to serve as members.

Background

Under Title IX of the Public Health Service Act, AHCPR is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHCPR accomplishes these goals through scientific research and through promotion of improvements in clinical practice, including prevention of diseases and other health conditions, and improvements in the organization, financing, and delivery of health care services (42 U.S.C. 299–299c–6).

U.S. Preventive Services Task Force

The U.S. Preventive Task Force (the Task Force) is an expert panel, first established in 1984 under the auspices of the Office of Disease Prevention and Health Promotion of the U.S. Public Health Service. The mission of the Task Force is to rigorously evaluate the effectiveness of clinical preventive services and to formulate recommendations for primary care clinicians regarding the appropriate content of periodic health examinations. The first Task Force concluded its work in 1989 with the publication of the *Guide to Clinical Preventive Services* (the *Guide*). A second Task Force, appointed in 1990, concluded its work with the release of the second edition of the *Guide* in December 1995. Programmatic responsibility for the Task Force was transferred to AHCPR in 1995. The 1995 edition of the *Guide*, evaluating common screening tests, counseling interventions, immunizations and chemoprophylaxis, is available on the Internet (www.ahcpr.gov/clinic) and through the U.S. Government Printing Office, (202) 512–1800 (refer to stock # 017–001–00525–8).

Members of the third Task Force will be asked to serve up to 5 years. They will meet quarterly for 1 to 2 day meetings in the Washington, DC area. The Task Force will work closely with other organizations, including the American College of Preventive Medicine, American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American College of Physicians, American Nurses Association, and the Canadian Task Force on the Periodic Health Examination.

Nominations for Third U.S. Preventive Services Task Force

Members of the third Task Force will be selected on the basis of: (1) clinical expertise in the primary health care of children and/or adults; (2) experience in critical evaluation of research and evidence-based methods; (3) expertise in disease prevention and health promotion; (4) national leadership within their field of expertise; (5) ability to work collaboratively with peers; and, (6) no substantial conflicts of interest that would impair the scientific integrity of the work of the Task Force. Some Task Force members without primary health care clinical experience may be selected based on their expertise in methodologic issues such as medical decision making, clinical epidemiology, health economics, and behavioral interventions. AHCPR particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals and organizations may nominate one or more qualified persons for membership on the Task Force. Nominations should include curricula vitae and should state that the nominee is willing to serve as a member of the Task Force. AHCPR will ask persons being considered for membership to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts, to permit evaluation of possibly significant conflicts of interest. It is anticipated that approximately 10–12 individuals will be invited to serve on the third Task Force.

Materials Submission and Deadline

To be considered for membership on the U.S. Preventive Services Task Force, written nominations should be submitted by March 9, 1998 to: Douglas B. Kamerow, M.D., M.P.H., Director, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Willco Building, Suite 310, Rockville, Maryland 20852.

Responses will be available for inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5:00 p.m. AHCPR will not reply to individual responses, but will consider all nominations in selecting members.

For Additional Information

Additional information about the U.S. Preventive Services Task Force may be obtained by contacting: David Atkins, M.D., M.P.H., Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Willco Building, Suite 310, Rockville, Maryland 20852; telephone (301) 594–4015; fax (301) 594–4027; *E-mail address:* datkins@abcpr.gov.

Dated: December 29, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 98–319 Filed 1–6–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: January 23, 1998.

Time: 4:00 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

Name of SEP: Chemistry and Related Sciences.

Date: February 25, 1998.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 5152, Telephone Conference.

Contact Person: Dr. Jean D. Sipe, Scientific Review Administrator, 6701 Rockledge Drive, Room 5152, Bethesda, Maryland 20892, (301) 435–1743.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–293 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Efficacy of Mammography Screening Ages 40–49 Eurotrial 40 Telephone Conference Call.

Date: January 13, 1998.

Time: 1:00 p.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Room 636B, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 636B, 6130 Executive Boulevard, MSC 7407, Bethesda, MD 20892–7407, Telephone 301/496–3428.

Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: December 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–301 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Clinical Trials Review Committee.

Date: February 23, 1998.

Time: 8:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Joyce A. Hunter, 6701 Rockledge Drive, Rm. 7192, MSC 7924, Bethesda, Maryland 20892, (301) 435–0287.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93,838, Lung Diseases Research, and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–294 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, February 12–13, 1998, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland.

The Council meeting will be open to the public on February 12 from 8:30 a.m. to approximately 3:00 p.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 3:00 p.m. on February 12 to adjournment on February 13, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–295 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Central Lipid Laboratory for National Health and Nutrition Survey.

Date: January 29, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Jon Ranhand, Ph.D., Two Rockledge Center, Room 7188, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0280.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Oxidation, Vascular Cell Function, and Atherosclerosis.

Date: February 9, 1998.

Time: 7:30 p.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Louis Ouellette, Ph.D., Two Rockledge Center, Room 7216, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0310.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Review of Independent Scientist Awards (K02s) and Mentored Clinical Scientist Development Awards (K08s).

Date: February 9, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: CATCH 4 (R18s).

Date: February 10–11, 1998.

Time: 9:00 a.m.

Place: Washington National Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

Contact Person: Louise Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Asthma in Puerto Rican Children (Telephone Conference Call).

Date: February 24, 1998.

Time: 2:00 p.m.

Place: 6701 Rockledge Drive, Room 7186, Bethesda, Maryland 20892.

Contact Person: Anne P. Clark, Ph.D., Two Rockledge Center, Room 7186, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0280.

Purpose/Agenda: To review and evaluate cooperative agreements.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–296 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of RFA (98–19).

Dates: January 29–30, 1998.

Time: 8:30 a.m.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of RFA (98–16).

Dates: March 30–31, 1998.

Time: 8:30 a.m.

Place: Hyatt Hotel, Dulles, 2300 Dulles Corner Blvd., Herndon, VA 22071.

Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: December 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–292 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Evaluation of Vaccine and Therapeutics Against Infectious Diseases Other than AIDS in the Elderly and Adults.

Date: January 29–30, 1998.

Time: 8:00 a.m. to Adjournment.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815, (301) 656–1500.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate contract proposals.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–299 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting of Board of Scientific Counselors, National Institute of Environmental Health Sciences

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences, January 19–21, 1998. The meeting will begin at 8:00 p.m. on January 19, at the Siena Hotel, 1505 E. Franklin Street, Chapel Hill, North Carolina. It will resume on January 20 at South Campus, Conference Rooms 101 ABC, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, North Carolina.

This meeting will be open to the public from 8:00–8:30 p.m. on January 19 for the concept clearance review of two proposed clinical studies, Genetic Studies in Cranial Neural Tube Defects, and Genetic Studies in the Polycystic Ovary Syndrome. The open portion of the meeting will resume from 8:30 a.m. to approximately 2:45 p.m. on January 20 for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Pulmonary Pathobiology. In addition, the meeting will be open from 2:00–3:00 p.m. on January 21 for research presentations by two Intramural Epidemiologists. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5, U.S. Code and sec. 10(d) of Pub. L. 92–463, the prereview meeting will be closed to the public on January 19 from approximately 8:30 p.m. to recess, as will the post review discussion on January 20 from 3:00 p.m. to adjournment and January 21 from 3:00 p.m. to adjournment, for the evaluation of the programs of the laboratories listed above, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Carl Barrett, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541–3205, will furnish rosters of committee members and program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dated: December 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–300 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–7 (J3).

Date: January 13, 1998.

Time: 3:00 PM.

Place: Room 6AS–25F, Natcher Building, NIH (Telephone Conference Call).

Contact: Lakshmanan Sankaran, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7794.

Purpose/Agenda: To review and evaluate contract proposals.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: December 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–302 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Tunicamycin Analogs of Novel Anit-bacterial Agents (Telephone Conference Call).

Date: January 12, 1998.

Time: 10:00 a.m. to adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Peter R. Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 29, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–303 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited K08 (Telephone Conference Call).

Date: January 13, 1998.

Time: 2:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C01, Bethesda, MD 20892, (301) 496–2500.

Contact Person: Dianne Tingley, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C07, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 29, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–304 Filed 1–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS)

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave. Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/ 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/ 915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986/908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200 / 800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999–LABS

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

St. Lawrence Hospital & Healthcare System, Toxicology Laboratory, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Gamma-Dynacare Medical Laboratories, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–305 Filed 1–6–98; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive., Reston, VA, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: General Knowledge of Natural Resource Policies in southwestern Colorado and northern New Mexico and General Knowledge of Natural Resource Policies in southeastern Utah.

OMB Approval Number: New Collection.

Abstract: Understanding institutional processes is an important component of ecosystem management. The authorities, policies, and practices of local, state and federal agencies and how those policies are perceived by the public greatly affects the way people interact with ecosystems. Yet, for most ecosystems there is no comprehensive understanding of the numbers, functions or effects of these factors. This is particularly true of southern Colorado, northern New Mexico, and southeastern Colorado, which are undergoing rapid and extensive change. A survey will be administered to a stratified random sample of citizens living in: Archuleta, La Plata, Montezuma, San Miguel, San Juan, and Delores counties in Colorado; San Juan county in New Mexico; and Grand, Wayne, Carbon, Emery and San Juan counties in Utah. Natural resource land managers and county government officials in these counties need to understand citizen knowledge of forest management policies—particularly regarding recreation management—in order to develop adequate management practices. The intended effect is to better inform managers and assist with development of citizen involvement programs.

Bureau Form Number: None.

Frequency: One time.

Description of Respondents: Individuals or households.

Estimated Completion Time: 12 minutes per respondent (approximate).

Number of Respondents: 800 (1200 mail-surveys).

Burden Hours: 160 hours. (The burden hour estimates are based on 12 minutes to complete each questionnaire and a 67% return rate.)

Dated: December 30, 1997.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 98–306 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal to Develop the ''Governmental Unit Boundary Data Content Standard'' as a Federal Geographic Data Committee Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''Governmental Unit Boundary Data Content Standard.'' If the proposal is approved, the standard will be developed following the FGDC standards development and approval process and will be considered for adoption by the FGDC

In its assigned federal leadership role in the development of the National Spatial Data Infrastructure (NSDI), the Committee recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standards.

DATES: Comments must be received on or before January 31, 1998.

CONTACT AND ADDRESSES: Comments may be submitted via Internet mail or by submitting electronic copy on diskette. Send comments via internet to: gdc-govunit@www.fgdc.gov.

A soft copy version, on a 3.5×3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments may be sent to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 22092.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''Governmental Unit Boundary Data Content Standard''.

Date of Proposal: November 1997.

Project Title: Governmental Unit Boundary Data Content Standard.

Submitting Organization: Federal Geographic Data Committee (FGDC) Subcommittee on Cultural and Demographic Data (SCDD).

Objectives: To provide consistency in the maintenance and interchange of governmental unit boundaries and facilitate the analysis of and comparison between the boundaries.

Scope: The Governmental Unit Boundary Data Content Standard (the Standard) will be an FGDC data content standard. The Standard will identify and provide semantic definitions and rules for utilizing components for describing governmental unit boundaries.

The applicability of the Standard; that is, the domain of entities the components shall be used to describe the boundaries of, is limited to governmental units although the Standard's principles may be extended to describe the boundaries of other geographic entities. The Standard adopts the U.S. Bureau of the Census description of a governmental unit as:

> A geographic entity established by legal action, and for the purpose of implementing administrative or governmental functions. Most governmental units have officially recognized boundaries. All area and population of the United States are part of one or more legal units.

1. The Census Bureau recognizes six categories of governmental units: active governmental unit, administrative entity, functioning governmental unit, general purpose government, inactive governmental unit, legal entity, and nonfunctioning governmental unit.

2. The Standard shall be applicable to all. The Standard will include a listing of the domain of governmental units recognized by the Census Bureau. Examples are: the Nation, American Indian reservation, States and statistically equivalent areas, counties and statistically equivalent areas, functioning and legal minor civil divisions, and incorporated places.

Justification: Governmental unit boundaries are a key part of many datasets. Although a large number of agencies present data which is either directly or indirectly referenced to governmental units, a relative few number of agencies are responsible for the collection and maintenance of governmental unit boundaries. Governmental unit boundaries are held by maintenance agencies in a format designed for their internal use, making the interchange of governmental unit boundaries to all interested parties unduly complex (for example, the Bureau of the Census maintains its governmental unit boundaries in its TIGER(tm) database). There is a need for an FGDC governmental unit boundary data content standard to improve the sharing and interchange of governmental unit boundaries amongst federal, state and local governmental and other interested participants.

The Bureau of the Census conducts a Boundary and Annexation Survey (BAS) to determine the inventory of legally defined entities and the correct names, political descriptions, and legal boundaries of counties, MCDs, and incorporated places as of January 1 of the year of the survey. The Standard will assist in the collection of this information.

The Standard meets the responsibilities stated in OMB Circular No. A–16 to develop standards through the FGDC to ensure that the spatial data produced by all Federal agencies is compatible.

The Development of a National Digital Geospatial Data Framework (Federal Geographic Data Committee publication, April, 1995) identified governmental units as one ''layer'' of the information content of framework. The Standard will assist in developing this aspect of framework. The development of the Standard is particularly timely in that Executive Order 12906 states the initial transportation, hydrology, and boundary elements of framework should be completed by January 1998 in order to support the decennial census of 2000. As Chair of the SCDD, the Department of Commerce, Bureau of the Census, has identified the development of the Standard as a means of furthering this goal.

Benefits: The Standard will benefit Federal, state and local governments and other participants interested in sharing and interchanging boundary data. Potential contributors to and users of framework data will also benefit.

Approach: All members of the SCDD participate in developing the Standard. The Bureau of the Census will provide staff to lead the effort.

The SCDD plans to draw from existing standards, which include the Spatial Data Transfer Standard. The SCDD will coordinate with those interested in framework through the FGDC Framework Working Group.

Related Standards: The following standards have been identified to date:

Address Content Standard (draft)—SCDD
Cadastral Data Content Standard for the National Spatial Data Infrastructure—FGDC Cadastral Subcommittee, December 1996
FIPS 5–2: Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas—National Institute of Standards and Technology (NIST)
FIPS 6–4: Counties and Equivalent Entities of the United States, Its Possessions, and Associated Areas—NIST
FIPS 55: Codes for Named Populated Places Primary County Divisions and Other Locational Entities—NIST
FIPS 173: Spatial Data Transfer Standard (SDTS)—NIST
Geographic Data File (GDF), version 3—GDF was recently issued to the Central European Nomalisation (CEN) for voting procedure and has been proposed to the International Organization for Standardization (ISO) Technical Committee (TC) 204
ISO 15046–7, Geographic Information—Part 7: Spatial Subschema (draft), ISO/TC 211
Geographic Area Reference Manual—U.S. Department of Commerce, Bureau of the Census, November 1994

Schedule: Work will begin on the Standard as soon as the proposal is approved by the FGDC's Standards Working Group (SWG). A working draft will be completed within nine months of the start date. The working draft will be forwarded to the SWG for consideration for public review.

Resources: The SCDD has adequate resources to accomplish most of the development and initial review processing of the Standard. However, additional resources will be needed to handle the full review and comment activity during non-Federal sector public review.

Potential Participants: Primary participants will be members of the SCDD:

Department of Agriculture, National Resources Conservation Service
Department of Agriculture, U.S. Forest Service
Department of Commerce, Bureau of the Census
Department of Commerce, Office of Ocean Resources, Conservation, and Assessment
Department of Defense, Tri-Service CADD/GIS Technology Center
Department of Defense, U.S. Army Corp of Engineers
Department of Health and Human Services, National Center for Health Statistics
Department of Housing and Urban Development
Department of the Interior, Bureau of Indian Affairs
Department of the Interior, Bureau of Land Management
Department of the Interior, Fish and Wildlife Services
Department of the Interior, National Park Service
Department of the Interior, U.S. Geological Survey
Department of Justice, Bureau of Justice Statistics
Department of Justice, Civil Rights Division
Department of Justice, Federal Bureau of Investigation
Department of Labor, Bureau of Labor Statistics
Department of State
Environmental Protection Agency
Federal Emergency Management Agency
Library of Congress
National Archives and Records Administration
National Aeronautics and Space Administration
National Capital Planning Commission
Social Security Administration
Tennessee Valley Authority.

Input will be solicited from participants in the FGDC's Cadastral Subcommittee, Framework Working Group, and International Boundaries Subcommittee.

SCDD's open membership policy allows for and encourages participation by non-federal individuals and organizations.

Target Authorization Body: The SCDD is developing and FGDC data content standard; the FGDC is the target authorization body.

Contact: Ms. Leslie Godwin, Vice Chairperson, SCDD, Bureau of the Census, Geography Division, Geospatial Research and Standards Staff, Washington, DC 20233–7400

Phone: (301) 457–1056, *FAX:* (301) 457–4710, *Internet:* lgodwin@census.gov

1. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, ''Geographic Areas Reference Manual'', issued November, 1994.

2. An active governmental unit is a governmental unit that has elected or appointed officials, raises revenues, and performs governmental activities (such as enactment of laws, provision of services, and entering into contracts.) An administrative entity is a geographic entity established by the Census Bureau for 1990 census data collection purposes. It usually consists of a census tract or block group. A functioning governmental unit is a general-purpose government that has the legal capacity to elect or appoint officials, raise revenues, provide services, and enter into contracts. A general purpose government is a functioning governmental unit that, through appointed or elected officials, performs many tasks and provides a wide range of services. An inactive governmental unit is a governmental unit that is not exercising its legal capacity to have elected or appointed officials; thus, it neither raises revenue or provides services. A legal entity is a geographic entity whose boundaries, name, origin, and political/statistical area description result from charters, laws, treaties, or other administrative or governmental action. A nonfunctioning governmental unit is a legally defined governmental unit that does not have appointed or elected officials, raise revenues, or perform general purpose governmental activities such as enacting laws, entering into contracts, or providing services. The term refers to an entity established to administer a task assigned to another governmental unit. A nonfunctioning governmental unit is not classified as a government by the Census Bureau.

Dated: December 23, 1997.

John Fischer,

Acting Chief, National Mapping Division.

[FR Doc. 98–370 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Reconsidered Final Determination Against Federal Acknowledgment of the Ramapough Mountain Indians, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 25 CFR 83.11(h)(3), notice is hereby given that the Assistant Secretary—Indian Affairs Ada E. Deer signed a reconsidered final determination which affirms the decision of January 16, 1996, to decline to acknowledge that the Ramapough Mountain Indians, Inc. (RMI), P.O. Box 478, Mahwah, New Jersey 07430–0478, exists as an Indian tribe within the meaning of Federal law. The reconsidered final determination was issued following full consideration of four issues identified by the Interior Board of Indian Appeals (IBIA) and which the Secretary of the Interior requested the Assistant Secretary—Indian Affairs to address. The group does not satisfy three of the seven criteria set forth in 25 CFR 83.7, and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.11(h)(3), this reconsidered final determination will become effective January 7, 1998.

ADDRESSES: Requests for a copy of the reconsidered final determination should be addressed to the Office of the Assistant Secretary, Bureau of Indian Affairs, 1849 C Street, NW, Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, MS 4603–MIB.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior (the Secretary) to the Assistant Secretary—Indian Affairs (the Assistant Secretary) by 209 DM 8. A notice proposing to decline to acknowledge the Ramapough Mountain Indians was published in the **Federal Register** on December 8, 1993. Under the 1978 regulations for Federal acknowledgment of Indian tribes, the petitioner had not met four of the mandatory criteria (83.7(a), (b), (c), and (e)). The original 180-day comment period was extended until May 8, 1995. The 60-day comment period for the petitioner to respond to third-party comments ended on July 10, 1995.

The Bureau of Indian Affairs (BIA) began the final determination process on September 18, 1995. The final determination, made under the 1994 revised regulations, concluded that the RMI failed to meet three of the mandatory criteria (83.7(b), (c), and (e)). It was signed on January 16, 1996, and a notice was published in the **Federal Register,** on February 6, 1996, (Vol. 61, No. 25, 4476). The RMI filed a request for reconsideration with the IBIA, on May 6, 1996.

The IBIA affirmed the Department of the Interior's (the Department) final determination on July 18, 1997. At the same time, the IBIA asked the Secretary to consider whether four specific issues identified by the IBIA constituted grounds for reconsideration of the final determination. On September 29, 1997, the Secretary requested the Assistant Secretary to address the four issues raised by the IBIA and issue a ‘‘reconsidered determination.’’ Three of the four questions concerned issues of due process. The fourth issue involved the interpretation of criterion 83.7(b) of the Federal acknowledgment regulations (25 CFR Part 83). On November 7, 1997, the Assistant Secretary signed a reconsidered final determination, which affirms and supplements the final determination and supersedes specific points in the final determination. A brief discussion of the four issues discussed in the reconsidered final determination follows.

The first issue considered by the Assistant Secretary was whether the BIA had refused to furnish copies of the anthropologist's field notes to the RMI and, if so, whether this was a denial of due process and constituted a basis for reconsideration of the final determination. The RMI correspondence files were thoroughly reviewed, as well as notes taken on telephone conversations and the notes retained from meetings with the RMI. There was no evidence that the RMI had requested the anthropologist's field notes and no evidence that the field notes had been denied to the RMI. The Assistant Secretary determined that there was no denial of due process and, therefore, this was not a cause for reconsideration of the final determination.

The second issue considered by the Assistant Secretary was whether the BIA failed to provide consultation concerning the date of beginning the final determination evaluation process and, if so, whether this failure violated the RMI's rights to due process and constituted a basis for reconsideration. The Secretary determined that the intent of § 83.10(l) is to allow the BIA to inform the petitioner of the proposed time frame for beginning or completing the final determination evaluation if a long administrative delay is expected before the final determination evaluation will begin, or when new evidence submitted by the petitioner is so extensive that the evaluation will require more than the regulatory 60-day period. The BIA did not expect any delays in beginning the final determination evaluation because personnel were available to do the work immediately. Further, the amount and character of the evidence submitted by the RMI in its response to the proposed finding were such that it could be evaluated within the 60-day timeframe. The Department also considered the reasons delineated in the RMI's requests to suspend the final determination process and notified the RMI in writing of its decision to continue with the evaluation. The final determination was issued within the 60-day regulatory time-frame. The Assistant Secretary determined that written notification, without prior oral consultation, was not a denial of due process and was not grounds for reconsideration of the final determination.

The third issue evaluated by the Assistant Secretary was whether the BIA had misled the RMI concerning RMI's required research. The Assistant Secretary also considered whether failure to notify the RMI of a change in the Assistant Secretary's conclusions on criterion 83.7(b) between the proposed finding and the final determination was a denial of due process. The Assistant Secretary also evaluated whether either of these matters constituted grounds of reconsideration.

The petitioner was told to focus its research on the pre-1850 time period since there was no evidence that its members descended from an historical Indian tribe. However, a review of the administrative files showed that the RMI were notified in several letters and in meetings with the BIA staff that they had to address all four of the criteria not met at the time of the proposed finding. These letters and the proposed finding clearly show that the RMI had actual notice that there was insufficient evidence for community from historical times to the present. The proposed finding technical reports and the summary under the criteria pointed to this lack of evidence. The Assistant Secretary determined that there was no denial of due process on this point and no grounds for reconsideration.

The proposed finding concluded that the RMI did not meet criterion 83.7(b) at any point in time. The final determination concluded that the RMI met criterion 83.7(b) between 1870 and 1950, but not before 1870 and not after 1950. The change in the Assistant Secretary's conclusions between the proposed finding and final determination was the result of a change in the wording of criterion 83.7(b) in the 1994 revised regulations, in conjunction with the BIA researchers' discovery of new, supplementary evidence that RMI had maintained a community from 1870 to 1950, including a church register which showed a high rate of endogamy among the petitioner's ancestors from 1878 to 1918. The RMI was not harmed by this change between the proposed finding and the final determination, but in fact benefited from the refined conclusions in the final determination. The Assistant Secretary is not required to notify petitioners of changes in conclusions between a proposed finding and a final determination before the final determination is signed. The Assistant Secretary determined that, while there had been a change in conclusions between the proposed finding and the final determination, failure to notify the RMI of the change was not a denial of due process and is not grounds for reconsideration.

With regard to the fourth issue, the IBIA asked the Secretary to clarify whether or not the Department required petitioners to live in a ''village-like setting'' in order to meet the requirements of criterion 83.7(b) and, if so, to make this requirement invalid. The Assistant Secretary clarified in the reconsidered final determination that neither the Department nor the regulations require petitioners to live in a ''village-like setting.'' The regulations do require that petitioner's maintain a community from the time of first-sustained contact with non-Indians to the present. The reconsidered final determination discusses the fact that evidence demonstrating that a petitioner's members live in a ''village-like setting'' and maintain consistent interaction with the remainder of the membership may be sufficient evidence to meet criterion 83.7(b), but it is not required (83.7(b)(2)). There are many other forms of evidence that may be used to demonstrate that petitioner's members have maintained social relations with each other (83.7(b)(1)). The reconsidered final determination also corrected an error in the final determination's summary of the proposed finding's conclusions about the residential distribution of the RMI members.

The reconsidered final determination supplements the original final determination and supersedes it to the extent the original is inconsistent with the reconsidered final determination. In conjunction with the original final determination, the reconsidered final determination is an amended final determination for the RMI petitioner.

Dated: December 30, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–298 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 25, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 22, 1998.

Carol D. Shull,

Keeper of the National Register.

Alabama

Clarke County

Jackson Historic District (Clarke County MPS), Roughly along College, Forest, and Carroll Aves., bounded by Cedar, Florida, Commerce, Clinton, and Spruce Sts., Jackson, 97001656

CALIFORNIA

Inyo County

Inyo County Courthouse, 168 N. Edwards St., Independence, 97001664

Lassen County

Lassen County Court House, Courthouse Square, Susanville, 97001659

Los Angeles County

Padua Hills Theatre, 4467 Via Padova, Claremont, 97001660

Napa County

St. Helena Historic Commercial District, Along Main St., between Adams and Spring Sts., St. Helena, 97001661

Sacramento County

Cranston—Geary House, 2101 G St., Sacramento, 97001662

San Mateo County

Hotel St. Matthew,
215–229 Second Ave., San Mateo, 97001663

Sonoma County

Hood, William, House, 7501 Sonoma Hwy, Santa Rosa, 97001658

Sutter County

Live Oak Historic Commercial District, Along Broadway between Pennington Rd. and Elm St., Live Oak, 97001657

COLORADO

Adams County

Brighton High School, 830 E. Bridge St., Brighton, 97001665

MISSOURI

Howard County

Bedford, Edwin and Nora Payne, House, 308 S. Main St., Fayette, 97001666

NORTH CAROLINA

Rutherford County

Cliffside Public School, 1 N. Main St., Cliffside, 97001667

Wake County

Mordecai Place Historic District, Roughly bounded by N. Blount St., Courtland Dr., Old Wake Forest Rd. and Mordecai Dr., Raleigh, 97001668

PENNSYLVANIA

Philadelphia County

West Philadelphia Streetcar Suburb Historic District, Roughly bounded by U. of Pennslvania campus, Woodlands Cemetery, Poweltown Ave., 52nd St., and Woodland Ave., Philadelphia, 97001669

Wayne County

Honesdale Residential Historic District, Roughly bounded by Lackawaxen R., Dyberry Cr. and Dyberry Cemetery, Overlook and 18th Sts., Honesdale, 97001670

TENNESSEE

Bedford County

Brame—Reed House, 1550 TN 64 W, Shelbyville vicinity, 97001671

WASHINGTON

King County

Agen Warehouse, 1201 Western Ave., Seattle, 97001673

Dearborn, Henry H., House, 1117 Minor Ave., Seattle, 97001672

Spokane County

Seehorn—Lang Building, 151–165 S. Lincoln St., Spokane, 97001674

[FR Doc. 98–367 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the Reclamation on Private Lands, 30 CFR 882.

DATES: Comments on the proposed information collection must be received by March 9, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783, or submit electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR Part 882.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Reclamation on Private Lands, 30 CFR 882.

OMB Control Number: 1029–0057.

Summary: Public Law 95–87 authorizes Federal, State and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 0.

Total Annual Burden Hours: 1.

Dated: January 2, 1998.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 98–308 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement; Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before February 6, 1998, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information which provides authority for State regulatory authorities to develop a blaster certification program, found at 30 CFR Part 850. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 850, which is 1029–0080.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on October 9, 1997 (62 FR 52772). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Permanent regulatory program requirements—standards for certification of blasters, 30 CFR 850.

OMB Control Number: 1029–0080.

Summary: This part establishes the requirements and procedures applicable to the development of regulatory programs for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240.

Dated: January 2, 1998.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 98–309 Filed 1–6–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1839–97]

Expansion of the Direct Mail Program for the Cleveland and Omaha District Offices; and the Cincinnati, Columbus, Des Moines, Sioux Falls, and Toledo Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces the Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the Cleveland and Omaha District Offices and the Cincinnati, Columbus, Des Moines, Sioux Falls, and Toledo Suboffices on the current list of direct mail sites for filing Form N–400, Application for Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION:

Background

Under the INS Direct Mail Program, certain applicants and petitioners for immigration benefits mail their applications or petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program have been discussed in detail in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program as applied to Form N–400 by adding the Cleveland and Omaha District Offices and the Cincinnati, Columbus, Des Moines, Sioux Falls, and Toledo Suboffices, as Direct Mail sites.

Where to File

Effective January 7, 1998, applicants for naturalization residing within the jurisdiction of the Cleveland and Omaha District Offices and the Cincinnati, Columbus, Des Moines, Sioux Falls and Toledo Suboffices must mail the Form N–400, Application for Naturalization, directly to the Nebraska Service Center at the following address: USINS Nebraska Service Center, Attention: N–400 Unit, P.O. Box 87400, Lincoln, Nebraska 68508–7400.

Transition

During the first 60 days following the effective date of this notice, the Cleveland and Omaha District Offices and the Cincinnati, Columbus, Des Moines, Sioux Falls, and Toledo Suboffices will forward in a timely fashion to the Nebraska Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective district or suboffice. Applicants will be provided a notice at the time of filing at the district or suboffice advising them that their application is being forwarded to the service center for initial processing. The applicant will receive written notification from their respective district or suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the district or suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the appropriate service center for processing.

Dated: December 31, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–363 Filed 1–6–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1883–97]

Expansion of the Direct Mail Program for the Atlanta, Baltimore, Helena, and Washington District Offices; and the Boise, Charlotte, Charleston, Indianapolis, Milwaukee, and Norfolk Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is expanding the Direct Mail Program to include the Atlanta, Baltimore, Helena, and Washington District Offices and the Boise, Charlotte, Charleston, Indianapolis, Milwaukee, and Norfolk Suboffices on the current list of direct mail sites for filing Form N–400 Applications for Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION:

Background

Under the INS Direct Mail Program certain applicants and petitioners for immigration benefits mail their applications or petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program has been discussed in detail in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program as applied to Form N–400 by adding the Atlanta, Baltimore, Helena, and Washington District Offices; and the Boise, Charlotte, Charleston, Indianapolis, Milwaukee, and Norfolk Suboffices, as Direct Mail Sites.

Where to File

Effective January 7, 1998 applicants for naturalization residing within the jurisdiction of the Atlanta, Baltimore, Helena, and Washington District Offices; and the Boise, Charlotte, Charleston, Indianapolis, Milwaukee, and Norfolk Suboffices must mail the Form N–400, Application for Naturalization directly to the following addresses:

(1) The Form N–400, Application for Naturalization, currently filed with the Service's Atlanta District Office and the Charlotte and Charleston Suboffices must be mailed directly to the Texas Service Center at the following address: USINS Texas Service Center, Attention: N–400 Unit, P.O. Box 851204, Mesquite, Texas 75185–1204.

(2) The Form N–400, Application for Naturalization, currently filed with the Service's Baltimore and Washington District Offices and the Norfolk Suboffice must be mailed directly to the Vermont Service Center at the following address: USINS Vermont Service Center, Attention: N–400 Unit, 75 Lower Weldon Street, St. Albans, Vermont 05479–0001.

(3) The Form N–400, Application for Naturalization for persons residing within the jurisdiction of the Helena District Office, and the Boise, Indianapolis, and Milwaukee Suboffices must be mailed directly to the following address: USINS Nebraska Service Center, Attention: N–400 Unit, P.O. Box 87400, Lincoln, Nebraska 68508–7400.

Transition

During the first 60 days following the effective date of this notice, the Atlanta, Baltimore, Helena and Washington District Offices and the Boise, Charlotte, Charleston, Indianapolis, Milwaukee, and Norfolk Suboffices will forward in a timely fashion to the appropriate service center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective district or suboffice. Applicants will be provided a notice at the time of filing at the district or suboffice advising them that their application is being forwarded to a service center for initial processing. The applicant will receive written notification from their respective district or suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the district or suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the appropriate service center for processing.

Dated: December 31, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–364 Filed 1–6–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1894–97]

Expansion of the Direct Mail Program for the Anchorage, Detroit, and Seattle District Offices and the Spokane and Yakima Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the Anchorage, Detroit, and Seattle District Offices and the Spokane and Yakima Suboffices on the current list of direct mail sites for filing form N–400, Application for Naturalization.

Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION:

Background

Under the INS Direct Mail Program, certain applicants and petitioners for immigration benefits mail directly the Form N–400 to an INS service center for processing instead of submitting them to a local office. The purposes and strategy of the Direct Mail Program has been discussed in detail in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program as applied to Form N–400 by adding the Anchorage, Detroit, and Seattle District Offices and the Spokane and Yakima Suboffices as Direct Mail sites.

Where to File

Effective January 12, 1998, applicants residing within the jurisdiction of the Anchorage, Detroit, and Seattle District Offices and the Spokane and Yakima Suboffices must mail the Form N–400, Application for Naturalization, directly to the following addresses: USINS Nebraska Service Center, *Attention:* N–400 Unit, P.O. Box 87400, Lincoln, Nebraska 68508–7400.

Transition

During the first 60 days following the effective date of this notice, the Anchorage, Detroit and Seattle District Offices and the Spokane and Yakima Suboffices will forward in a timely fashion to the Nebraska Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective district or suboffice. Applicants will be provided a notice at the time of filing at the district or suboffice advising them that their application is being forwarded to the service center for initial processing. The applicant will receive written notification from their respective district or suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the district or suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the Nebraska Service Center for processing.

Dated: December 31, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–365 Filed 1–6–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1884–97]

Expansion of the Direct Mail Program for the Denver, Kansas City, Portland, Oregon, and St. Paul District Offices and the Salt Lake City and St. Louis Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to

include the Denver, Kansas City, Portland, Oregon, and St. Paul District Offices and the Salt Lake City and St. Louis Suboffices on the current list of direct mail sites for filing Form N–400, Application for Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective January 7, 1998 or January 30, 1998, whichever is later.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION:

Background

Under the INS Direct Mail Program, certain applicants and petitioners for immigration benefits mail their applications or petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program has been discussed in detail in previous rulemaking notices (see, 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program as applied to Form N–400, by adding the Denver, Kansas City, Portland, Oregon, and St. Paul District Offices, and the Salt Lake City and St. Louis Suboffices, as Direct Mail sites.

Where to File

Effective [Insert date of publication in the **Federal Register**, or January 30, 1998, whichever is later] applicants for naturalization residing within the jurisdiction of the Denver, Kansas, Portland, Oregon, and the St. Paul District Offices and the Salt Lake City and St. Louis Suboffices must mail the Form N–400, Application for Naturalization directly to the following address: USINS Nebraska Service Center, Attention: N–400 Unit, P.O. Box 87400, Lincoln, Nebraska 68508–7400.

Transition

During the first 60 days following the effective date of this notice, the Denver, Kansas City, Portland, Oregon, and St. Paul District Offices and the Salt Lake City and St. Louis Suboffices will forward in a timely fashion to the Nebraska Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective district or suboffice. Applicants will be provided a notice at the time of filing at the district or suboffice advising them that their application is being forwarded to the service center for initial processing. The applicant will receive written notification from their respective district or suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the district or suboffices, they will be receipted and filed when they arrive at the service center.

After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the appropriate service center for processing.

Dated: December 31, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–366 Filed 1–6–98; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–001]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: February 5, 1998, 8:30 a.m. to 6:00 p.m.; and February 6, 1998, 8:00 a.m. to 12:30 p.m.

ADDRESSES: NASA Headquarters, Room MIC 6, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Rhome, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1490.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Subcommittee Summary Reports
—Office of Life and Microgravity Sciences and Applications (OLMSA) Overview
—Neurolab Mission Science Overview
—Draft Policy on Astronaut Health and Biomedical Research Roles and Responsibilities
—Stewardship as an Accounting Standard
—Grants End-to-End Study
—International Space Station as a Commercial Operation
—Committee Annual OLMSA Program Review
—Discussion of Committee Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 22, 1997.

Alan M. Ladwig,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–368 Filed 1–6–98; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Issuance of Final Director's Decision Under 10 CFR 2.206

[Docket No. 50–271]

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has taken action with regard to a Petition dated December 6, 1996, submitted by Mr. Jonathan M. Block, on behalf of the Citizens Awareness Network, Inc. (CAN). The Petition requested evaluation of certain Memoranda included with the Petition related to the Vermont Yankee Nuclear Power Station (Vermont Yankee) operated by the Vermont Yankee Nuclear Power Corporation (Licensee) to see if enforcement action is warranted.

The first document enclosed with the Petition is a CAN Memorandum dated December 5, 1996, that reviews information presented by the Licensee at an enforcement conference held on July 23, 1996, involving the minimum-flow valves in the Vermont Yankee residual heat removal (RHR) system. The second document included with the Petition is a CAN Memorandum dated December 6, 1996, that contains a review of certain licensee event reports (LERs) submitted by the Licensee in the latter part of 1996. On the basis of these documents, CAN requests that the NRC determine whether enforcement action is warranted pursuant to 10 CFR 2.206.

On October 8, 1997, a Partial Director's Decision was issued that responded to the first Memorandum concerning the RHR system and all but three of the LERs listed in the second Memorandum. This Final Director's Decisionaddresses the NRC staff's conclusions regarding the three remaining LERs that were still being evaluated at the time the Partial Director's Decision was issued.

On November 7, 1997, CAN submitted a letter to the Director of NRR commenting on the Partial Director's Decision. CAN raised a concern that the Partial Director's Decision did not adequately address concerns raised in its Petition of December 6, 1996. In a response from the NRC staff dated November 28, 1997, CAN was informed that its letter provided no new or additional information that would warrant a review of the Partial Director's Decision. In its letter of November 7, 1997, CAN also raised a concern asserting ''systematic mismanagement'' at the Vermont Yankee facility and requested certain NRC actions. The Petitioner was informed that this concern would be treated as a supplement to the original Petition and is also addressed in this Final Director's Decision.

The Director of NRR has granted the Petition in that the NRC staff has evaluated all of the issues and LERs raised in the two Memoranda to see if enforcement action is warranted on the basis of the information contained therein. The evaluation concludes that no further enforcement action is warranted. The Director has denied the Petitioner's requests set out in the November 7, 1997 letter that the NRC conduct additional reviews of safety systems at the Vermont Yankee facility. The reasons for the NRC staff's conclusions are provided in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–97–26), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Brooks Memorial Library, 224 Main Street, Brattleboro, VT.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision in that time.

Dated at Rockville, Maryland, this 29th day of December 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Final Director's Decision Pursuant to 10 CFR 2.206

[DD–97–26]

I. Introduction

On December 6, 1996, Mr. Jonathan M. Block submitted a Petition on behalf of the Citizens Awareness Network, Inc. (CAN or Petitioner), and included two Memoranda from CAN. The first Memorandum, dated December 5, 1996, reviews information presented by the Vermont Yankee Nuclear Power Corporation (Licensee) at a predecisional enforcement conference held on July 23, 1996, involving the minimum-flow valves in the residual heat removal (RHR) system at the Vermont Yankee Nuclear Power Station (Vermont Yankee facility). The second Memorandum, dated December 6, 1996, contains a review of certain licensee event reports (LERs) submitted by the Licensee in the latter part of 1996. The Petitioner requests that the NRC evaluate these documents, pursuant to 10 CFR 2.206, to determine if enforcement action is warranted on the basis of information contained therein.

On February 12, 1997, the NRC informed the Petitioner in an acknowledgement letter that the Petition had been referred to the Office of Nuclear Reactor Regulation (NRR) for the preparation of a Director's Decision and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition. On October 8, 1997, the NRC issued a Partial Director's Decision that responded to the first Memorandum concerning the RHR system and all but three of the LERs listed in the second Memorandum. This Final Director's Decision addresses the NRC staff's conclusions regarding the three remaining LERs that were still being evaluated at the time the Partial Director's Decision was issued.

On November 7, 1997, CAN submitted a letter to the Director of NRR commenting on the Partial Director's Decision. CAN raised a concern that the Partial Director's Decision did not adequately address concerns raised in its Petition of December 6, 1996. In a response from the NRC staff dated November 28, 1997, CAN was informed that its letter provided no new or additional information that would warrant a review of the Partial Director's Decision. In its November 7, 1997 letter, CAN also raised a concern about asserted ''systematic mismanagement'' at the Vermont Yankee facility and requested certain NRC actions. The Petitioner was informed that this specific concern would be treated as a supplement to the original Petition and is addressed in this Final Director's Decision.

II. Discussion

The NRC staff's evaluation of the three remaining LERs and the Petitioner's supplemental request for action follows.

A. Licensee Event Reports

A CAN Memorandum dated December 6, 1996, included with the Petition contains a review of several LERs submitted by the Licensee in the latter part of 1996. On the basis of its analysis of the LERs, CAN reaches certain conclusions regarding Licensee performance and actions that it believes should be taken. The Partial Director's Decision evaluated LERs 96–13, 96–14, 96–19, 96–20, 96–21, 96–22, and 96–25 and provided a response to CAN's overall conclusions regarding Licensee performance and requested actions. LERs 96–15, 96–18, and 96–23 were still open at the time the Partial Director's Decision was issued. The staff has completed its evaluation of these three LERs and its conclusions are presented below.

1. *LER 96–15:* ''Original B31.1 ANSI Code Section That Required Overpressurization Relief for Isolated Piping Sections Was Not Considered During [the] Original Design''

Certain piping sections which would be isolated after a loss-of-coolant accident (LOCA) were found to lack overpressure protection, contrary to code requirements. The water in this piping could expand because of the high temperatures accompanying a LOCA and exceed the design pressure rating of the piping. CAN asserts that the Licensee failed to take advantage of earlier opportunities to identify this design error when making modifications to the six systems discussed in the LER. CAN is correct in that the LER documented the first discovery of this problem, although modifications had been made to the affected systems earlier. This potential overpressurization problem has been identified at other plants, as evidenced by the issuance of NRC Information Notice 96–49 on August 20, 1996, and NRC Generic Letter (GL) 96–06 on September 30, 1996. The Licensee was aware of events in this area and identified this issue at its site before the generic communications previously referred to were issued. The Licensee's corrective actions included a design change that provided the required overpressure protection for the affected lines. The change was completed in the 1996 refueling outage conducted during the period of September 6, 1996 to October 30, 1996.

Because the Licensee identified the design deficiency described in this LER by other than routine quality assurance or surveillance activities and has implemented appropriate corrective actions to resolve the discrepancy, this ''old design issue'' was not cited in accordance with NRC Enforcement Policy, Section VII.B.3.[1] The LER was closed in Inspection Report 50–271/97–11.

2. *LER 96–18:* ''Inadequate Installation and Inspection of Fire Protection Wrap Results in Plant Operation Outside of Its Design Basis; A Single Fire Would Impact Multiple Trains of Safety-Related Equipment''

CAN asserts that this deficiency had significant adverse safety implications. The reported deficiency consisted of a small gap in the fire barrier installed on a cable tray support. The cable tray contained wiring to support operation of the emergency core cooling system (ECCS). The NRC staff does not consider CAN's claim that a fire could have rendered both divisions of the ECCS inoperable credible. The Licensee's evaluation found that existing fire protection analyses were very conservative and that with the combustible loading and fire detection and suppression equipment in the area, no credible fire threat could challenge the functionality of the ''as found'' wrapped cable. The staff agrees with the Licensee's analysis as documented in the LER and has found that the Licensee acted appropriately to correct the fire barrier deficiency and to prevent similar problems in the future.

The NRC staff found that the deficiency described in this LER was a violation of NRC requirements of 10 CFR Part 50, Appendix R, Section III.G. However, in accordance with the provisions of NRC Enforcement Policy, Section VII.B.4, no notice of violation was issued in this case because the deficiency: (1) Was identified by the Licensee as part of the corrective actions for a previous issue related to Appendix R, (2) had the same root cause as the previous issue, (3) did not substantially change the safety significance or the character of the regulatory concern arising out of the initial action, and (4) the deficiency was corrected within a reasonable time following identification. The LER was closed in Inspection Report 50–271/97–80.

3. *LER 96–23:* ''Inadequate Surveillance Procedure Results in Failure To Meet Technical Specification Requirements for Radiation Monitor Functional Testing''

The reactor building and refueling floor radiation monitor test procedure did not verify the high alarm contact actuation as required by the Vermont Yankee Technical Specifications. The NRC staff agrees with CAN that this event presented no significant risk to public health and safety. Considering that the monitors were verified to be fully functional and were in the condition required by plant Technical Specifications, this specific event appears to have been limited to an inadequate testing methodology. The Licensee's corrective actions included revising the deficient surveillance test procedure to properly test the high alarm output contacts.

Because the deficiency identified in this LER was of minor safety significance and was identified and corrected by the Licensee, it was treated as a non-cited violation in accordance with NRC Enforcement Policy, Section VII.B.1. The LER was closed in Inspection Report 50–271/97–08.

B. Supplemental Request for Action

On November 7, 1997, CAN submitted a letter which raised a concern about asserted ''systematic mismanagement'' at the Vermont Yankee facility and requested that three actions be taken. In its response to the Petitioner, the NRC staff indicated that this concern would be considered as a supplement to the Petition.

The requested actions, along with the NRC staff's evaluation, are discussed below.

1. ''An NRC team in conjunction with an outside contractor conduct a review of a second system, the ventilation system.''

From May 5 through June 13, 1997, the NRC staff performed a detailed design inspection of the low-pressure coolant injection and RHR service water systems at the Vermont Yankee facility. The inspection team consisted of a team leader from the NRC and five contractor engineers from Stone & Webster Engineering Corporation. The systems were chosen on the basis of their importance in mitigating design-basis accidents at Vermont Yankee. The purpose of the inspection was to evaluate the capability of the selected systems to perform the safety functions required by the design bases and the consistency of the as-built configuration and system operations with the Final Safety Analysis Report (FSAR). Overall, the inspection team concluded that the two systems were capable of performing their intended safety functions. However, the team identified some issues that indicated potential programmatic concerns extending beyond the two systems that were inspected. Specifically, the team identified the following issues which indicated potential programmatic concerns: (1) Several examples which indicated the Licensee's correction of licensing documentation was not timely; (2) when rendering equipment inoperable for surveillance testing, the Licensee's practice concerning entry into the limiting condition of operation (LCO) was not consistent with the guidance provided in GL 91–18, ''Resolution of Degraded and Nonconforming Conditions;'' (3) deviations from the licensing commitments made in response to GL 89–13, ''Service Water System Problems Affecting Safety-Related Equipment;'' (4) weaknesses in the development and control of calculations, and the review and approval process for calculations; and (5) weaknesses concerning the Licensee's translation of design criteria and design bases into detailed operating instructions. The results of this inspection were documented in Inspection Report 50–271/97–201.

By letter dated October 27, 1997, the Licensee provided a schedule and detailed the plans to complete the corrective actions required to resolve the broader programmatic issues listed in the inspection report. In its letter, the Licensee listed several initiatives it has undertaken to improve its performance. These initiatives include: (1) A re-engineering of the corrective action program, (2) a large scale program to develop Design Basis Documents for the 23 most risk significant systems, (3) initiation of a Design Basis Validation Program, (4) conversion of the plant's Technical Specifications to the Standard Technical Specification format, (5) a large scale instrument setpoint calculation and verification program, (6) a large scale effort to re-engineer the

[1] General Statement of Policy and Procedures for NRC Enforcement Actions, NUREG–1600 (Enforcement Policy).

configuration management program, and (7) creation of a System Engineering Department.

The NRC staff has concluded that the Licensee's proposed actions and schedule are acceptable and that the facility may be operated while the Licensee works to resolve these issues. The staff will continue to follow the Licensee's progress to improve the facility's design-basis documentation and implement the initiatives outlined in its October 27, 1997 letter through the normal inspection process. A detailed design inspection by the NRC staff of an additional safety system is not warranted at this time.

2. ''NRC with an outside contractor and VY [Vermont Yankee] conduct a review of all backup safety systems to assure adequacy of these systems in order to protect worker and public health and safety.''

As stated in the reply to Item 1 above, the NRC staff has conducted a detailed design inspection of two selected systems at the Vermont Yankee facility. The inspection team found the two systems capable of performing their intended design functions. As discussed in Item 1 above, the inspection report also documented several issues of programmatic concern. The NRC staff has determined that the Licensee's response to these programmatic concerns is acceptable and implementation of the Licensee's actions will be assessed during followup inspections. Overall, the staff finds that the detailed design inspection and the followup inspection activities provide adequate assurance of public health and safety and that a design review inspection of additional safety systems is not warranted at this time.

3. ''Given the lack of thoroughness by the licensee and significant flaws in the FSAR and design basis evaluation, CAN questions Region I staff's competence to effectively oversee reactors under its authority. We therefore request that the archive of NRC's oversight failures at VY [Vermont Yankee] be added to the Inspector General's investigation of complicity and systematic failure to enforce NRC regulations by NRC staff in Region I and Project Directorates.''

With regard to this request, CAN's letter has been forwarded to the Office of the Inspector General.

III. Conclusion

The NRC staff has reviewed the information submitted by the Petitioner. The Petitioner's request is granted in part in that the NRC staff has evaluated all of the issues raised in the two Memoranda and the supplemental letter provided by the Petitioner to see if enforcement action is warranted on the basis of the information contained therein. In the Partial and the Final Director's Decision, the NRC staff has discussed each Memorandum and the supplemental letter and described any related enforcement action that was taken. The Petitioner's supplemental request that the NRC, in conjunction with an outside contractor, conduct additional review of safety systems at the Vermont Yankee facility is denied. With respect to the supplemental request for an investigation of NRC oversight of the Vermont Yankee facility, the Petitioner's supplemental letter was forwarded to the Office of the Inspector General.

As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 29th day of December 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–371 Filed 1–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Degradation of Steam Generator Internals; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 97–06 to all holders of operating licenses for pressurized-water reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to (1) again alert addressees to the previously communicated findings of damage to steam generator internals, namely, tube support plates and tube bundle wrappers, at foreign PWR facilities; (2) alert addressees to recent findings of damage to steam generator tube support plates at a U.S. PWR facility; (3) emphasize to addressees the importance of performing comprehensive examinations of steam generator internals to ensure steam generator tube structural integrity is maintained in accordance with the requirements of Appendix B to 10 CFR Part 50; and (4) require all addressees to submit information that will enable the NRC staff to verify whether addressees' steam generator internals comply with and conform to the current licensing bases for their respective facilities. This generic letter only requests information from the addressees under the provisions of Section 182a of the Atomic Energy Act, as amended, and 10 CFR 50.54(f).

The generic letter is available in the NRC Public Document Room under accession number 9712180168.

DATES: The generic letter was issued on December 30, 1997.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Stephanie M. Coffin, at (301) 415–2778.

SUPPLEMENTARY INFORMATION: This generic letter does not constitute a backfit as defined in 10 CFR 50.109(a)(1) since it does not impose modifications of or additions to structures, systems or components or to design or operation of an addressee's facility. It also does not impose an interpretation of the Commission's rules that is either new or different from a previous staff position. The staff, therefore, has not performed a backfit analysis.

Dated at Rockville, Maryland, this 30th day of December 1997.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–372 Filed 1–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 5, 12, 19, and 26, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 5

There are no meetings the week of January 5.

Week of January 12—Tentative

Thursday, January 15

9:00 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of January 19—Tentative

Wednesday, January 21

10:00 a.m.

Briefing on Operating Reactors and Fuel Facilities, (Public Meeting), (Contact: William Dean, 301–415–1726)

2:00 p.m.

Briefing on Material Control of Generally License Devices, (Public Meeting), (Contact: Larry Camper, 301–415–7231)

3:30 p.m.

Affirmation Session, (Public Meeting)

Friday, January 23

9:30 a.m.

Discussion of Interagency Issues (Closed—Ex. 9)

Week of January 26—Tentative

Wednesday, January 28

11:30 a.m.

Affirmation Session (Public Meeting), (if needed)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

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The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 31, 1997.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–462 Filed 1–5–98; 12:55 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 39490, File No. SR–NASD–97–50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change By the NASD To Extend From 15 Seconds to 17 Seconds the Amount of Time a Market Maker Has To Update Its Quote After an Order Execution in SOES Before Being Required To Execute a Subsequent Order

December 24, 1997.

On July 14, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder.[2] The proposal amends NASD Rule 4730(b)(1) to indicate that once the Nasdaq Stock Market, Inc.'s (''Nasdaq'') Small Order Execution System (''SOES'') executes an unpreferenced market order or a marketable limit order against a SOES market maker, that market maker is not required to execute another unpreferenced SOES order at the same bid or offer in the same security until 17 seconds have elapsed, absent a quotation update by the market maker within such 17-second period. On July 24, 1997, notice of the proposed rule change, including the substance of the proposal, was published for comment in the **Federal Register**.[3] The Commission received 64 comment letters, which are discussed below. The Commission is hereby approving the proposed rule change.

I. Description

The proposed rule change specifies the obligations of SOES market makers during non-locked and non-crossed market situations. As amended, NASD Rule 4730(b)(1) would provide that once SOES executes an unpreferenced market order or a marketable limit order against a SOES market maker, that market maker is not required to execute another unpreferenced SOES order at the same bid or offer in the same security until 17 seconds have elapsed, absent a quotation update by the market maker within that 17-second period.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38849 (July 17, 1997) 62 FR 39883 (July 24, 1997).

Currently, NASD Rule 4730(b)(1) provides that:

> Market Makers shall have a period of time following their receipt of an execution report in which to update their quotation in the security in question before being required to execute another unpreferenced order at the same bid or offer in the same security. This period of time shall initially be established as 15 seconds, but may be modified upon appropriate notification to SOES participants.

This language was originally added to the NASD's rules in October 1991 to give a SOES market maker a brief opportunity to update its quotations in response to executions it received through SOES (''15-Second SOES Execution Response Period''). As the current language of NASD Rule 4730(b) reflects, the ''15-Second SOES Execution Response Period'' commences when a market maker has received notification of a SOES execution through the system.[4] Because SOES does not have the capability to determine the exact time when a market maker receives a SOES execution report, at the time this rule was implemented Nasdaq estimated that it took up to five seconds for SOES to execute an order against a market maker and for the market maker to receive a report of the execution (the ''SOES Execution Report Communication Period''). As a result, SOES was programmed to add uniformly a five-second period to the ''15-Second SOES Execution Response Period,'' with the effect that the system executes unpreferenced market orders against a market maker in twenty-second intervals, absent a quotation update by the market maker.

Nasdaq now estimates that on average, the SOES Execution Report Communication Period is between two and three seconds, although the actual time may vary depending on activity and communications traffic during different periods of the day. Based on this data, the NASD determined that it was appropriate to assign a two-second period to the SOES Execution Report Communications Period for purposes of the rule.

The NASD proposes to incorporate explicitly this two-second period into NASD Rule 4730. The proposed rule change is designed to retain the ability of a market maker to respond to SOES executions while recognizing that,

[4] *See* Exchange Act Release No. 29810 (October 10, 1991) 56 FR 52098, 52099 (October 17, 1991) (order approving file no. SR–NASD–91–18) (''[f]ollowing receipt of an execution report of an unpreferenced purchase or sale through SOES, a market maker will have a period of time (15 seconds) to update its quote prior to executing any subsequent transaction on the same side of the market at the same price.'' [Footnote omitted].).

under normal circumstnaces, a minimal period of time is necessary for reports of those executions to be received by the market maker. The proposed amendments to NASD Rule 4730(b) also would clarify that:

(1) A market maker becomes immediately eligible to receive another execution through SOES if it updates its quote (its bid, offer, or size) during the 17-second period,[5] and

(2) The 17-second period arises regardless of whether the market maker executes an unpreferenced market order or an unpreferenced marketable limit order.

This rule change is intended to eliminate ambiguities in Nasdaq's implementation of this rule and among market participants concerning the manner in which unpreferenced orders are executed in SOES.

II. Summary of Comments

The Commission received 64 comment letters from the public. Of these, 58 letters concerned other NASD filings, and thus were irrelevant and one comment letter was submitted twice. Of the five remaining comment letters, three were in favor of the proposed rule change and two were against it. None of these comment letters contained any reason for the positions taken.

III. Discussion

The Commission finds the proposed rule change, by helping to ensure that market makers stand willing to buy and sell securities at all times, is consistent with the Exchange Act and in particular with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Exchange Act.

Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities. Section 15A(b)(6) also requires that the rules of a national securities association be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) provides that the rules of the association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 15A(b)(11) requires the NASD, as an association, to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the proposed amendments will help to ensure that a market maker has no more time than necessary after execution—*i.e.*, 17 seconds—before it must update its quotes. This requirement will help ensure that a market maker cannot attempt to avoid its market making obligations by waiting a lengthy period of time after a SOES execution before entering an updated quote.[6] As a result, the proposed rule change should increase a market maker's compliance with its obligation to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers should, in turn, enhance the integrity of the Nasdaq market by helping to ensure the best execution of customer orders and improving the price discovery process for Nasdaq securities.

The Commission also notes that the NASD filed the proposed rule change in response to concerns about the rule the Commission raised in its *Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market* (''SEC Report''). In relevant part, the SEC Report notes that the

October 1991 SOES rule amendments as filed with the Commission also allowed for the modification of the SOES operating software to provide for a fifteen-second delay between executions by a particular market maker. The purpose of this delay was to give the SOES market maker an opportunity to update its quotations after receiving a report of a trade executed through SOES. In fact, the NASD implemented an effective delay of twenty seconds, which reduced the ability of SOES users to obtain executions.[7] The purported rationale for the additional five-second delay was to allow for the time taken for the electronic transmission of execution reports and quote updates. According to internal NASD studies, however, any delays in transmission occurred only at the opening of busy trading days and the vast majority of any such delays were no more than two to three seconds in length. The NASD should have set forth in its filings with the Commission seeking approval for the delay that the time between executions had been set at twenty seconds, but did not do so. The existence of the additional five second delay was discovered by the Commission staff during the investigation [that led to the issuance of the SEC Report].[8]

The proposed rule change addresses the concerns of the SEC Report by clearly establishing the time delay between SOES executions against a market maker. Moreover, the delay includes, in addition to the previously established 15-second period, only the time measured by the NASD for electronic transmission of an execution report.

Thus, the proposal to change NASD Rule 4730 is consistent with the Exchange Act and in particular with the following sections of that Act:

(1) Section 15A(b)(6), because it is designed to prevent a market maker from failing to meet its obligation to make a continuous, two-sided market;

(2) Section 11A(a)(1)(C)(i)–(iii), because it assures: economically efficient execution of securities transactions; fair competition among brokers and dealers by encouraging timely, fair, and accurate quotations; and the availability to brokers, dealers, and investors of timely information concerning these fair and accurate quotations.

Further, the proposed change to NASD Rule 4370 is consistent with Section 15A(b)(9) of the Exchange Act, because it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, but merely alters, slightly, a timing requirement for market makers.

Finally, the Commission believes that the proposal is consistent with Exchange Act Section 15A(b)(11). In particular, by helping to ensure that

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[5] The proposed amendments to NASD Rule 4730(b) do not change in any way the current functionality of SOES whereby preferenced orders are continuously executed against a market maker without any delay between executions. In addition, as is presently the case during locked and crossed markets, SOES will execute orders (both preferenced and unpreferenced against a market maker that is locked or crossed in five second intervals. *See* NASD Rule 4730(b)(3).

[6] A market maker that can avoid updating its quote for a period of time can take advantage of its temporary ability to avoid SOES executions and wait to see how other market makers update their quotes. This delay could serve to lessen competition among market makers.

[7] The Release by the Commission approving the proposed rule changes explicitly noted that the delay function was set at fifteen seconds and stated that ''[a]ny change in the time period must be submitted to the Commission for review pursuant to Section 19(b) of the [Exchange] Act.'' Exchange Act Release No. 29810 (October 10, 1991) 56 FR 52098 (October 17, 1991) n.10. The NASD had never made any such submission. (This footnote conforms to footnote 160 in the Appendix to the SEC Report.)

[8] Appendix to SEC Report at A–62–63.

SOES market makers update their quotes promptly after executions, the proposal should help to produce fair and informative quotations and prevent fictitious and misleading quotations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–50) be, and hereby is, approved.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–290 Filed 1–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39497; File No. SR–NYSE–97–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 431 to Establish Margin and Net Capital Requirements for Joint Back Office Arrangements

December 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 2, 1997, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rule 431, ''Margin Requirements.'' The modifications relate to: (a) joint back office (''JBO'') arrangements, (b) margin requirements for broker-dealer accounts, (c) margin requirements for specialists' and market makers' accounts, and (d) control and restricted securities.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April, 1996, the Exchange established the Rule 431 Committee (''the Committee'') to review all aspects of Rule 431 and make recommendations to the Exchange in the wake of recent changes to federal margin regulations and changing industry conditions. The Committee created various subcommittees to review specific provisions of Rule 431 utilizing the expertise of industry representatives knowledgeable in the application of Rule 431. As a result of the efforts of the ''Control Stock'' and ''Joint Back Office'' subcommittees, and reviews by the Committee and Exchange staff, the Exchange Board approved amendments to Rule 431 as set forth below.

(a) JBO Arrangements

Regulation T, issued by the Board of Governors of the Federal Reserve System (''FRB''), permits a broker-dealer to ''effect or finance transactions of any of its owners if the [broker-dealer] is a clearing and serving broker or dealer owned jointly or individually by other [broker-dealers].''[2] The proposed rule change would provide certain regulatory requirements for establishing and maintaining such JBO arrangements. Carrying/clearing broker-dealer forming a JBO would be required to: (i) provide written notification to the Exchange prior to establishing a JBO, (ii) maintain minimum tentative net capital[3] of $25 million, or maintain minimum net capital of $10 million if engaged in the primary business of clearing options market-maker accounts,[4] (iii) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers, and (iv) deduct from net capital, the ''haircut'' requirements pursuant to the Commission's Net Capital Rule (''Rule 15c3–1'')[5] in excess of the equity maintained in the accounts of participating broker-dealers.

Furthermore, under the proposal JBO participants must be registered broker-dealers subject to Rule 15c3–1, and will be required to maintain an ownership interest in the JBO pursuant to Regulation T. Exclusive of their ownership interest in the JBO arrangement, JBO participants must maintain a minimum liquidating equity of $1 million. If the liquidating equity falls below $1 million, the JBO participant must eliminate the deficiency within five business days or become subject to the margin requirements under other provisions of Exchange Rule 431.[6]

(b) Margin Requirements for Broker-Dealer Accounts

Currently, the amount of any deficiency between the equity maintained in the proprietary account carried for another broker-dealer and the maintenance margin required by Exchange Rule 431(c)(1) (*i.e.,* 25% of the current market value of securities ''long'' in the account) is deducted in computing the net capital of the carrying member organization. In order for introducing broker-dealers to receive the same treatment as proposed for JBO

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[9] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change likely will enhance the efficiency and fairness of the process by which market makers update their quotes. It likely also will enhance the ability of investors to obtain updated market maker quotes quickly, thus increasing Nasdaq's transparency. The net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 12 CFR 220.11. Regulation T is titled ''Credit By Brokers and Dealers'' and was issued by the FRB pursuant to the Act.

[3] As discussed in the Exchange's Interpretation Handbook, the term ''tentative net capital'' generally refers to net capital before the application of ''haircuts'' (*infra* note 5) and undue concentration charges on securities and options positions. *See* NYSE Interpretation Handbook, Section I(c)(2)(vi)(M)(04), ''Tentative net Capital.''

[4] Under the proposed rule change, clearance of option market maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions.

[5] 17 CFR 240.15c3–1 *et seq.,* ''Net Capital Requirements for Brokers or Dealers.'' Rule 15c3–1 requires a broker-dealer to reduce its net worth by certain percentages, known as ''haircuts,'' of the market value of its securities positions.

[6] The Exchange believes that in order to establish an effective, industry-wide regulatory scheme for JBO arrangements, the other self-regulatory organizations should adopt the requirements in the proposed rule change that relate to JBO arrangements.

participants, the amendments would compute the deduction to the carrying member organization's net capital based upon the haircut requirements of Rule 15c3–1 (*i.e.*, 15% of the market value for long positions) [7] rather than the currently required 25%.

(c) Margin Requirements for Specialists' and Market Makers' Accounts

Likewise, the amount of any deficiency between the equity in the account carried for an ''approved specialist or market maker'' [8] and the 25% maintenance margin required by Exchange Rule 431(c)(1) is deducted in computing the net capital of the carrying member organization. Similar to the contemplated amendments relating to the margin requirements for broker-dealer accounts, the proposed rule change would compute the deduction to the carrying member organization's net capital based upon the haircut requirements of Rule 15c3–1 (*i.e.*, 15%) rather than the presently mandated 25%.

The same modification would be made to the margin provision governing joint accounts carried by member organizations in which the member organizations participate. If the equity maintained in the account by the other participants is deficient, the proposal would require the carrying member organization to compute the deduction to its net capital based upon the haircut requirements of Rule 15c3–1 (*i.e.*, 15%) rather than the margin requirements of Exchange Rule 431(c)(1).

(d) Control and Restricted Securities

Currently, Exchange Rule 431(e)(8)(C)(iv) sets forth a ''Concentration Reduction'' formula that establishes margin requirements for control and restricted securities based upon the percent of outstanding shares or the percent of average weekly volume. The Exchange believes the Concentration Reduction provision has the effect of imposing higher margin requirements on accounts that have greater collateral deposited. To eliminate what the Exchange views as an anomalous result, the proposed rule change would exclude ''excess securities'' [9] from the calculations.

In addition, the proposed rule change would except from Exchange Rule 431(e)(8) all restricted securities saleable pursuant to Rule 144(k),[10] Rule 145(d)(2),[11] or Rule 145(d)(3) [12] under the Securities Act of 1933. Currently, only those restricted securities saleable by non-affiliates of the issuer pursuant to Rule 144(k), Rule 145(d)(2), or Rule 145(d)(3) are excepted from Exchange Rule 431(e)(8). As a result, broker-dealers would be permitted to sell certain restricted securities in the event of a customer default pursuant to Rule 144(k) without being subject to the requirements of Exchange Rule 431. Accordingly, those customer-owned, restricted securities saleable under Rule 144(k) would be subject to the same maintenance margin requirements that presently apply to ordinary stock (25%).

Finally, the proposed rule change would alter the calculation of a member firm's net capital with regard to extending credit to customers on control and restricted securities. The proposal would amend Exchange Rule 431(e)(8)(C)(ii) to provide that the ''greater of the aggregate credit agreed, in writing to be or actually extended to all customers on control and restricted securities of any one issue that exceeds 10% of the member organization's excess net capital shall be deducted from net capital for purposes of determining a member organization's status under Rule 326.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [13] in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange further believes that the proposed rule change is consistent with the rules and regulations promulgated by the FRB for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, pursuant to Section 7(a) of the Act.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–28 and should be submitted by January 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–291 Filed 1–6–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 240.15c3–1(c)(2)(vi)(J).

[8] Exchange Rule 431(e)(5)(A) defines the term ''approved specialist or market maker'' as either: (1) a specialist or market maker, who is deemed a specialist for all purposes under the Securities Exchange Act of 1934 and who is registered pursuant to the rules of a national securities exchange; or (ii) an OTC market maker or third market maker, who meets the requirements of Section 220.12(d) of Regulation T.

[9] The term ''excess securities'' would be defined as the amount of securities, if any, by which the aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on such control and restricted securities if the applicable margin requirement was 50%.

[10] 17 CFR 230.144(k).

[11] 17 CFR 230.144(d)(2).

[12] 17 CFR 230.144(d)(3).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78g(a).

[15] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Privacy Act; System of Records

AGENCY: Selective Service System.

ACTION: Notice of intent to amend systems of records and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Selective System is issuing notice of our intent to amend the system of records entitled the SSS–9 Master Pay Record to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193). We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by February 6, 1998. The proposed routine use will become effective as proposed without further notice on February 6, 1998 unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to Henry N. Williams, General Counsel, Selective Service System, 1515 Wilson Blvd., Arlington, VA 22209–2425. Phone 703–605–4012; FAX 703–605–4006. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, 1515 Wilson Blvd., Arlington, VA 22209–2425. Phone 703–605–4012; FAX 703–605–4006.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Selective Service System will disclose data from its SSS–9 Master Pay Record system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 Fed. Reg. 51663 (October 2, 1997).

FPLS is computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the Selective Service System, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each Selective Service System employee, within one month of the end of the quarterly reporting period.

Information submitted by the Selective Service System to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the Selective Service System to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the SSS–9 Master Pay Record system notice originally published at 40 FR 41345 (September 5, 1975) and most recently amended at 49 FR 34324 (August 29, 1984) is further amended by addition of the following routine use:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such use

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

Dated: December 17, 1997.

Gil Coronado,

Director of Selective Service.

[FR Doc. 98–408 Filed 1–6–98; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3040]

State of Florida

Hillsborough County and the contiguous Counties of Hardee, Manatee, Pasco, Pinellas, and Polk in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding which occurred December 12 through 14, 1997. Applications for loans for physical damage may be filed until the close of business on February 20, 1998 and for economic injury until the close of business on September 22, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 304006 and for economic injury the number is 969500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 22, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 98–287 Filed 1–6–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2999]

The Territory of Guam

As a result of the President's major disaster declaration on December 17, 1997, I find that the Territory of Guam constitutes a disaster area as a result of damages caused by Typhoon Paka beginning on December 16, 1997 and continuing. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on February 17, 1998 and for economic injury until the close of business on September 17, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 299906 and for economic injury the number is 969400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 18, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–285 Filed 1–6–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Table of Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Notice of publication of full table of small business size standards.

SUMMARY: The U.S. Small Business Administration (SBA) is publishing a full table of small business size standards by four-digit Standard Industrial Classification (SIC) code. This table does not create, establish or modify any size standards currently in existence. This table merely presents all four-digit SIC codes for which SBA has established a small business size standard as a convenient reference for users of SBA's size standards.

FOR FURTHER INFORMATION CONTACT: SBA Office of Size Standards at (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA is publishing below a full table of small business size standards in accordance with 13 CFR 121.121. On January 31, 1996, SBA published in the **Federal Register** (61 FR 3280) a Final Rule that clarified and streamlined its small business size standards and related eligibility requirements under 13 CFR 121, ''Small Business Size Regulations.'' The simplification of SBA's Small Business Size Regulations reduced the apparent size of the table of small business size standards in § 121.201 by listing general size standards by SIC Division. Those standards apply to all industries in that Division except those two-digit major group or four-digit industry codes listed with other specific standards. This streamlined table eliminated the duplication of common industry size standards within a Division and reduced the Code of Federal Regulations by fourteen pages.

Since the January 31, 1996, publication of the streamlined size standards table in § 121.201, no small business size standards has been changed. The table published here does not create, establish or modify any size standards currently in existence, but only presents all size standards in an expanded and more convenient format. Changes or modifications to 13 CFR 121 are only made in accordance with the Administrative Procedures Act and the Regulatory Flexibility Act. Any changes to the table of small business size standards will be reflected in the annual publication of the full list of size standards. SBA will also provide copies of any size related rules on its Internet web site at http://www.sba.gov/. Those with access to the Internet can obtain and download the current table of size standards, listed by four-digit SIC industry code, at http://www.sbaonline.sba.gov/gopher/Financial-Assistance/Size-Standards/. Others may contact any SBA office to verify size standards currently in effect.

SBA was aware when it published the streamlined table of size standards that many users prefer a table listing size standards for each four-digit SIC code. To accommodate those users, the SBA stated in the Final Rule (§ 121.101) that it would publish such an entire table annually in the **Federal Register**. SBA recognizes that having the entire list of small business size standards with the four-digit SIC codes often makes it easier for users to apply the proper standards to their needs, and that it should also reduce the chance for error. This also provides users with additional size standards information without expanding federal regulations. Accordingly, this notice contains a table matching a small business size standard with each four-digit SIC code for which SBA has established a size standard.

Since the publication of the streamlined size standards table, SBA has received questions as to whether small business size standards apply to the four-digit SIC codes that are not specifically listed in the text of § 121.201. The paragraph at the head of table in § 121.201 states that ''Size standards are listed by Division and apply *to all industries in that Division* [emphasis added] except those specifically listed with separate size standards for a specific two-digit major group or four-digit industry code.'' This means that ''all four-digit SIC codes within that major group have the same size standard, unless otherwise noted as exceptions. For example, the size standard for management consulting services, SIC code 8742, is $5 million in average annual revenues. Although this industry is not listed in the size table in § 121.201, a size standard does exist for that industry.

The proper application of the size standards table in § 121.201 is very important since to be eligible for programs reserved for small business, SBA requires that a concern qualify as a small business using the size standard(s) for the appropriate industry. In connection with SBA financial assistance programs, § 121.301 states that ''(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant must not exceed the size standard for the *industry* [emphasis added] in which: (1) The applicant combined with its affiliates is primarily engaged; and (2) The applicant alone is primarily engaged.'' Also, to be eligible as a small business for federal procurement programs, a concern must meet the size standard specified in the solicitation, which the contracting officer selects giving primary consideration ''to the *industry* *descriptions in the SIC Manual* * * * [emphasis added]'' (§ 121.402).

The 1987 SIC Manual, Appendix B (page 699), designates ''industry'' by a four-digit SIC code. The industries described in the SIC Manual are all four-digit industries. SBA's small business size standards were established and continue to exist for the various SIC industries, which are identified solely by their four-digit codes. By publishing this full table of small business size standards annually, SBA intends to facilitate the correct use of the small business size standards.

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	DIVISION A—AGRICULTURE, FORESTRY AND FISHING	
	MAJOR GROUP 01—AGRICULTURAL PRODUCTION—CROPS	
0111	Wheat	$0.5
0112	Rice	$0.5
0115	Corn	$0.5
0116	Soybeans	$0.5
0119	Cash Grains, N.E.C.	$0.5
0131	Cotton	$0.5
0132	Tobacco	$0.5
0133	Sugarcane and Sugar Beets	$0.5
0134	Irish Potatoes	$0.5
0139	Field Crops, Except Cash Grains, N.E.C.	$0.5
0161	Vegetables and Melons	$0.5
0171	Berry Crops	$0.5
0172	Grapes	$0.5
0173	Tree Nuts	$0.5
0174	Citrus Fruits	$0.5
0175	Deciduous Tree Fruits	$0.5
0179	Fruits and Tree Nuts, N.E.C.	$0.5
0181	Ornamental Floriculture Nursery Products	$0.5
0182	Food Crops Grown Under Cover	$0.5
0191	General Farms, Primarily Crop	$0.5
	MAJOR GROUP 02—LIVESTOCK AND ANIMAL SPECIALTIES	
0211	Beef Cattle Feedlots (Custom)	$1.5
0212	Beef Cattle, Except Feedlots	$0.5
0213	Hogs	$0.5
0214	Sheep and Goats	$0.5
0219	General Livestock, Except Dairy and Poultry	$0.5
0241	Dairy Farms	$0.5
0251	Broiler, Fryer, and Roaster Chickens	$0.5
0252	Chicken Eggs	$9.0
0253	Turkeys and Turkey Eggs	$0.5
0254	Poultry Hatcheries	$0.5
0259	Poultry and Eggs, N.E.C.	$0.5
0271	Fur-Bearing Animals and Rabbits	$0.5
0272	Horses and Other Equines	$0.5
0273	Animal Aquaculture	$0.5
0279	Animal Specialties, N.E.C.	$0.5
0291	General Farms, Primarily Livestock and Animal Specialties	$0.5
	MAJOR GROUP 07—AGRICULTURAL SERVICES	
0711	Soil Preparation Services	$5.0
0721	Crop Planting, Cultivating, and Protecting	$5.0
0722	Crop Harvesting, Primarily by Machine	$5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	$5.0
0724	Cotton Ginning	$5.0
0741	Veterinary Services for Livestock	$5.0
0742	Veterinary Services for Animal Specialties	$5.0
0751	Livestock Services, Except Veterinary	$5.0
0752	Animal Specialty Services, Except Veterinary	$5.0
0761	Farm Labor Contractors and Crew Leaders	$5.0
0762	Farm Management Services	$5.0
0781	Landscape Counseling and Planning	$5.0
0782	Lawn and Garden Services	$5.0
0783	Ornamental Shrub and Tree Services	$5.0
	MAJOR GROUP 08—FORESTRY	
0811	Timber Tracts	$5.0
0831	Forest Nurseries and Gathering of Forest Products	$5.0

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
0851	Forestry Services	$5.0
	MAJOR GROUP 09—FISHING, HUNTING, AND TRAPPING	
0912	Finfish	$3.0
0913	Shellfish	$3.0
0919	Miscellaneous Marine Products	$3.0
0921	Fish Hatcheries and Preserves	$3.0
0971	Hunting and Trapping, and Game Propagation	$3.0
	DIVISION B—MINING	
	MAJOR GROUP 10—METAL MINING	
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$5.0
1094	Uranium-Radium-Vanadium Ores	500
1099	Miscellaneous Metal Ores, N.E.C.	500
	MAJOR GROUP 12—COAL MINING	
1221	Bituminous Coal and Lignite Surface Mining	500
1222	Bituminous Coal Underground Mining	500
1231	Anthracite Mining	500
1241	Coal Mining Services	$5.0
	MAJOR GROUP 13—OIL AND GAS EXTRACTION	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$5.0
1389	Oil and Gas Field Services, N.E.C.	$5.0
	MAJOR GROUP 14—MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels	$5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500
	DIVISION C—CONSTRUCTION	
	MAJOR GROUP 15—BUILDING CONSTRUCTION—GENERAL CONTRACTORS AND OPERATIVE BUILDERS	
1521	General Contractors—Single-Family Houses	$17.0
1522	General Contractors—Residential Buildings, Other than Single-Family	$17.0
1531	Operative Builders	$17.0
1541	General Contractors—Industrial Buildings and Warehouses	$17.0
1542	General Contractors—Nonresidential Buildings, Other than Industrial Buildings and Warehouses	$17.0
	MAJOR GROUP 16—HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION—CONTRACTORS	
1611	Highway and Street Construction, Except Elevated Highways	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction	$17.0
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction	$17.0
1629	Heavy Construction, N.E.C.	$17.0
EXCEPT	Dredging and Surface Cleanup Activities	[1] $13.5

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 17—CONSTRUCTION—SPECIAL TRADE CONTRACTORS	
1711	Plumbing, Heating, and Air-Conditioning	$7.0
1721	Painting and Paper Hanging	$7.0
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stone Work	$7.0
1742	Plastering, Drywall, Acoustical and Insulation Work	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	$7.0
1751	Carpentry Work	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing, Siding, and Sheet Metal Work	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavation Work	$7.0
1795	Wrecking and Demolition Work	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
EXCEPT,	Base Housing Maintenance	[12] $7.0
	DIVISION D—MANUFACTURING [2]	
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products	500
2015	Poultry Slaughtering and Processing	500
2021	Creamery Butter	500
2022	Natural, Processed, and Imitation Cheese	500
2023	Dry, Condensed, and Evaporated Dairy Products	500
2024	Ice Cream and Frozen Desserts	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies	[3] 500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	500
2037	Frozen Fruits, Fruit Juices, and Vegetables	500
2038	Frozen Specialties, N.E.C.	500
2041	Flour and Other Grain Mill Products	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Prepared Flour Mixes and Doughs	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500
2052	Cookies and Crackers	750
2053	Frozen Bakery Products, Except Bread	500
2061	Cane Sugar, Except Refining	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064	Candy and Other Confectionary Products	500
2066	Chocolate and Cocoa Products	500
2067	Chewing Gum	500
2068	Salted and Roasted Nuts and Seeds	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2077	Animal and Marine Fats and Oils	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits	500
2085	Distilled and Blended Liquors	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500
2091	Canned and Cured Fish and Seafoods	500
2092	Prepared Fresh or Frozen Fish and Seafoods	500
2095	Roasted Coffee	500
2096	Potato Chips, Corn Chips, and Similar Snacks	500

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2099	Food Preparations, N.E.C.	500
	MAJOR GROUP 21—TOBACCO PRODUCTS	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Chewing and Smoking Tobacco and Snuff	500
2141	Tobacco Stemming and Redrying	500
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broadwoven Fabric Mills, Cotton	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk	500
2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks	500
2252	Hosiery, N.E.C.	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear and Nightwear Mills	500
2257	Weft Knit Fabric Mills	500
2258	Lace and Warp Knit Fabric Mills	500
2259	Knitting Mills, N.E.C.	500
2261	Finishers of Broadwoven Fabrics of Cotton	1,000
2262	Finishers of Broadwoven Fabric of Manmade Fiber and Silk	500
2269	Finishers of Textiles, N.E.C.	500
2273	Carpets and Rugs	500
2281	Yarn Spinning Mills	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized	1,000
2296	Tire Cord and Fabrics	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C.	500
	MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	
2311	Men's and Boys' Suits, Coats and Overcoats	500
2321	Men's and Boys' Shirts, Except Work Shirts	500
2322	Men's and Boys' Underwear and Nightwear	500
2323	Men's and Boys' Neckwear	500
2325	Men's and Boys' Separate Trousers and Slacks	500
2326	Men's and Boys' Work Clothing	500
2329	Men's and Boys' Clothing, N.E.C.	500
2331	Women's, Misses', and Juniors' Blouses and Shirts	500
2335	Women's, Misses', and Juniors' Dresses	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear	500
2342	Brassieres, Girdles, and Allied Garments	500
2353	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500
2384	Robes and Dressing Gowns	500
2385	Waterproof Outerwear	500
2386	Leather and Sheep-Lined Clothing	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains and Draperies	500
2392	Housefurnishings, Except Curtains and Draperies	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade	500
2396	Automotive Trimmings, Apparel Findings, and Related Products	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 24—LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	
2411	Logging	500
2221	Sawmills and Planing Mills, General	500
2426	Hardwood Dimension and Flooring Mills	500
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C.	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components	500
2491	Wood Preserving	500
2493	Reconstituted Wood Products	500
2499	Wood Products, N.E.C.	500
	MAJOR GROUP 25—FURNITURE AND FIXTURES	
2511	Wood Household Furniture, Except Upholstered	500
2512	Wood Household Furniture, Upholstered	500
2514	Metal Household Furniture	500
2515	Mattresses, Foundations, and Convertible Beds	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500
2519	Household Furniture, N.E.C.	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture	500
2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers	500
2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood	500
2591	Drapery Hardware and Window Blinds and Shades	500
2599	Furniture and Fixtures, N.E.C.	500
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750
2652	Setup Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes	500
2655	Fiber Cans, Tubes, Drums, and Similar Products	500
2656	Sanitary Food Containers, Except Folding	750
2657	Folding Paperboard Boxes, Including Sanitary	750
2671	Packaging Paper and Plastics Film, Coated and Laminated	500
2672	Coated and Laminated Paper, N.E.C.	500
2673	Plastics, Foil, and Coated Paper Bags	500
2674	Uncoated Paper and Multiwall Bags	500
2675	Die-Cut Paper and Paperboard and Cardboard	500
2676	Sanitary Paper Products	500
2677	Envelopes	500
2678	Stationery, Tablets, and Related Products	500
2679	Converted Paper and Paperboard Products, N.E.C.	500
	MAJOR GROUP 27—PRINTING, PUBLISHING, AND ALLIED INDUSTRIES	
2711	Newspapers: Publishing, or Publishing and Printing	500
2721	Periodicals: Publishing, or Publishing and Printing	500
2731	Books: Publishing, or Publishing and Printing	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithographic	500
2754	Commercial Printing, Gravure	500
2759	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms	500
2771	Greeting Cards	500
2782	Blankbooks, Looseleaf Binders and Devices	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
2796	Platemaking and Related Services	500
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastic Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2835	In Vitro and In Vivo Diagnostic Substances	500
2836	Biological Products, Except Diagnostic Substances	500
2841	Soap and Other Detergents, Except Speciality Cleaners	750
2842	Speciality Cleaning, Polishing, and Sanitation Preparations	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500
2861	Gum and Wood Chemicals	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES	
2911	Petroleum Refining	[4] 1,500
2951	Asphalt Paving Mixtures and Blocks	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and Inner Tubes	[5] 1,000
3021	Rubber and Plastics Footwear	1,000
3052	Rubber and Plastics Hose and Belting	500
3053	Gaskets, Packing, and Sealing Devices	500
3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods	500
3069	Fabricated Rubber Products, N.E.C.	500
3081	Unsupported Plastics Film and Sheet	500
3082	Unsupported Plastics Profile Shapes	500
3083	Laminated Plastics Plate, Sheet, and Profile Shapes	500
3084	Plastics Pipe	500
3085	Plastics Bottles	500
3086	Plastics Foam Products	500
3087	Custom Compounding of Purchased Plastics Resins	500
3088	Plastics Plumbing Fixtures	500
3089	Plastics Products, N.E.C.	500
	MAJOR GROUP 31—LEATHER AND LEATHER PRODUCTS	
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic	500
3144	Women's Footwear, Except Athletic	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens	500
3161	Luggage	500
3171	Women's Handbags and Purses	500

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
3172	Personal Leather Goods, Except Women's Handbags and Purses	500
3199	Leather Goods, N.E.C.	500
	MAJOR GROUP 32—STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3262	Vitreous China Table and Kitchen Articles	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	500
3264	Porcelain Electrical Supplies	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick	500
3273	Ready Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313	Electrometallurgical Products, Except Steel	750
3315	Steel Wiredrawing and Steel Nails and Spikes	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Smelting and Refining of Nonferrous metals, Except Copper and Aluminum	750
3341	Secondary Smelting and Refining of Nonferrous Metals	500
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3363	Aluminum Die-Castings	500
3364	Nonferrous Die-Castings, Except Aluminum	500
3365	Aluminum Foundries	500
3366	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools Handsaws	500
3425	Saw Blades and Handsaws	500
3429	Hardware, N.E.C.	500
3431	Enameled Iron and Metal Sanitary Ware	750
3432	Plumbing Fixture Fittings and Trim	500

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
3433	Heating Equipment, Except Electric and Warm Air Furnaces	500
3441	Fabricated Structural Metal	500
3442	Metal Doors, Sash, Frames, Molding, and Trim	500
3443	Fabricated Plate Work (Boiler Shops)	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work	500
3448	Prefabricated Metal Buildings and Components	500
3449	Miscellaneous Structural Metal Work	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C.	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3491	Industrial Valves	500
3492	Fluid Power Valves and Hose Fittings	500
3493	Steel Springs, Except Wire	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Pipe Fittings	500
3499	Fabricated Metal Products, N.E.C.	500
	MAJOR GROUP 35—INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment	500
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment	500
3531	Construction Machinery and Equipment	750
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment	500
3533	Oil and Gas Field Machinery and Equipment	500
3534	Elevators and Moving Stairways	500
3535	Conveyors and Conveying Equipment	500
3536	Overhead Traveling Cranes, Hoists, and Monorail Systems	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers	750
3541	Machine Tools, Metal Cutting Types	500
3542	Machine Tools, Metal Forming Types	500
3543	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds	500
3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices	500
3546	Power-Driven Handtools	500
3547	Rolling Mill Machinery and Equipment	500
3548	Electric and Gas Welding and Soldering Equipment	500
3549	Metalworking Machinery, N.E.C.	500
3552	Textile Machinery	500
3553	Woodworking Machinery	500
3554	Paper Industries Machinery	500
3555	Printing Trades Machinery and Equipment	500
3556	Food Products Machinery	500
3559	Special Industry Machinery, N.E.C.	500
3561	Pumps and Pumping Equipment	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment	500
3565	Packaging Machinery	500
3566	Speed Changers, Industrial High-Speed Drives, and Gears	500
3567	Industrial Process Furnaces and Ovens	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery and Equipment, N.E.C.	500
3571	Electronic Computers	1,000
3572	Computer Storage Devices	1,000
3575	Computer Terminals	1,000

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
3577	Computer Peripheral Equipment, N.E.C.	1,000
3578	Calculating and Accounting Machines, Except Electronic Computers	1,000
3579	Office Machines, N.E.C.	500
3581	Automatic Vending Machines	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment	750
3586	Measuring and Dispensing Pumps	500
3589	Service Industry Machinery, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves	500
3593	Fluid Power Cylinders and Actuators	500
3594	Fluid Power Pumps and Motors	500
3596	Scales and Balances, Except Laboratory	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C.	500
	MAJOR GROUP 36—ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS, EXCEPT COMPUTER EQUIPMENT	
3612	Power, Distribution, and Specialty Transformers	750
3613	Switchgear and Switchboard Apparatus	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625	Relays and Industrial Controls	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers	1,000
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3639	Household Appliances, N.E.C.	500
3641	Electric Lamp Bulbs and Tubes	1,000
3643	Current-Carrying Wiring Devices	500
3644	Noncurrent-Carrying Wiring Devices	500
3645	Residential Electric Lighting Fixtures	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C.	500
3651	Household Audio and Video Equipment	750
3652	Phonograph Records and Prerecorded Auto Tapes and Disks	750
3661	Telephone and Telegraph Apparatus	1,000
3663	Radio and Television Broadcasting and Communications Equipment	750
3669	Communication Equipment, N.E.C.	750
3671	Electron Tubes	750
3672	Printed Circuit Boards	500
3674	Semiconductors and Related Devices	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors	500
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines	750
3695	Magnetic and Optical Recording Media	1,000
3699	Electrical Machinery, Equipment, and Supplies	750
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor Vehicles and Passenger Car Bodies	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories	750
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C.	1,000 [9]
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000
EXCEPT,	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108th Meridian.	1,000
	Ship Repair (Including Overhauls and and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108th Meridian.	1,000
3732	Boat Building and Repairing	500

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts	500
3761	Guided Missiles and Space Vehicles	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792	Travel Trailers and Campers	500
3795	Tanks and Tank Components	1,000
3799	Transportation Equipment, N.E.C.	500
MAJOR GROUP 38—MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS		
3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	750
3821	Laboratory Apparatus and Furniture	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products	500
3824	Totalizing Fluid Meters and Counting Devices	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals	500
3826	Laboratory Analytical Instruments	500
3827	Optical Instruments and Lenses	500
3829	Measuring and Controlling Devices, N.E.C.	500
3841	Surgical and Medical Instruments and Apparatus	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies	500
3843	Dental Equipment and Supplies	500
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	500
3845	Electromedical and Electrotherapeutic Apparatus	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts	500
MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES		
3911	Jewelry, Precious Metal	500
3914	Silverware, Plated Ware, and Stainless Steel Ware	500
3915	Jewelers' Findings and Materials, and Lapidary Work	500
3931	Musical Instruments	500
3942	Dolls and Stuffed Toys	500
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical Pencils, and Parts	500
3952	Lead Pencils, Crayons, and Artists' Materials	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal	500
3965	Fasteners, Buttons, Needles, and Pins	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Specialties	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999	Manufacturing Industries, N.E.C.	500
DIVISION E—TRANSPORTATION, COMMUNICATIONS ELECTRIC, GAS AND SANITARY SERVICES		
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments	500
MAJOR GROUP 41—LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION		
4111	Local and Suburban Transit	$5.0
4119	Local Passenger Transportation, N.E.C.	$5.0
4121	Taxicabs	$5.0
4131	Intercity and Rural Bus Transportation	$5.0
4141	Local Bus Charter Service	$5.0
4142	Bus Charter Service, Except Local	$5.0
4151	School Buses	$5.0
4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	$5.0
MAJOR GROUP 42—MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING		
4212	Local Trucking Without Storage	$18.5
EXCEPT	Garbage and Refuse Collection, Without Disposal	$6.0

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
4213	Trucking, Except Local	$18.5
4214	Local Trucking With Storage	$18.5
4215	Courier Services, Except by Air	$18.5
4221	Farm Product Warehousing and Storage	$18.5
4222	Refrigerated Warehousing and Storage	$18.5
4225	General Warehousing and Storage	$18.5
4226	Special Warehousing and Storage, N.E.C.	$18.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$5.0
	MAJOR GROUP 44—WATER TRANSPORTATION	
4412	Deep Sea Foreign Transportation of Freight	500
4424	Deep Sea Domestic Transportation of Freight	500
4432	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449	Water Transportation of Freight, N.E.C.	500
4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4482	Ferries	500
4489	Water Transportation of Passengers, N.E.C.	500
4491	Marine Cargo Handling	$18.5
4492	Towing and Tugboat Services	$5.0
4493	Marinas	$5.0
4499	Water Transportation Services, N.E.C.	$5.0
EXCEPT	Offshore Marine Water Transportation Services	$20.5
	MAJOR GROUP 45—TRANSPORTATION BY AIR	
4512	Air Transportation, Scheduled	1,500
4513	Air Courier Services	1,500
4522	Air Transportation, Nonscheduled	1,500
EXCEPT	Offshore Marine Air Transportation Services	$20.5
4581	Airports, Flying Fields, and Airport Terminal Services	$5.0
	MAJOR GROUP 46—PIPLINES, EXCEPT NATURAL GAS	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines, N.E.C.	$25.0
	MAJOR GROUP 47—TRANSPORTATION SERVICES	
4724	Travel Agencies	[6] $1.0
4725	Tour Operators	$5.0
4729	Arrangement of Passenger Transportation, N.E.C.	$5.0
4731	Arrangement of Transportation of Freight and Cargo	$18.5
4741	Rental of Railroad Cars	$5.0
4783	Packing and Crating	$18.5
4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	$5.0
4789	Transportation Services, N.E.C.	$5.0
	MAJOR GROUP 48—COMMUNICATIONS	
4812	Radiotelephone Communications	1,500
4813	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	$5.0
4832	Radio Broadcasting Stations	$5.0
4833	Television Broadcasting Stations	$10.5
4841	Cable and Other Pay Television Services	$11.0
4899	Communications Services, N.E.C.	$11.0
	MAJOR GROUP 49—ELECTRIC, GAS, AND SANITARY SERVICES	
4911	Electric Services	4 million megawatt hrs.
4922	Natural Gas Transmission	$5.0
4923	Gas Transmission and Distribution	$5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	$5.0
4931	Electric and Other Services Combined	$5.0
4932	Gas and Other Services Combined	$5.0
4939	Combination Utilities, N.E.C.	$5.0
4941	Water Supply	$5.0

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
4952	Sewerage Systems	$5.0
4953	Refuse Systems	$6.0
4959	Sanitary Services, N.E.C.	$5.0
4961	Steam and Air-Conditioning Supply	$9.0
4971	Irrigation Systems	$5.0
	DIVISION F—WHOLESALE TRADE	
	(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	MAJOR GROUP 50—WHOLESALE TRADE—DURABLE GOODS	
5012	Automobiles and Other Motor Vehicles	100
5013	Motor Vehicle Supplies and New Parts	100
5014	Tires and Tubes	100
5015	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels	100
5032	Brick, Stone, and Related Construction Materials	100
5033	Roofing, Siding, and Insulation Materials	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies	100
5044	Office Equipment	100
5045	Computers and Computer Peripheral Equipment and Software	100
5046	Commercial Equipment, N.E.C.	100
5047	Medical, Dental, and Hospital Equipment and Supplies	100
5048	Ophthalmic Goods	100
5049	Professional Equipment and Supplies, N.E.C.	100
5051	Metals Service Centers and Offices	100
5052	Coal and Other Minerals and Ores	100
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials	100
5064	Electrical Appliances, Television and Radio Sets	100
5065	Electronic Parts and Equipment, N.E.C.	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies	100
5078	Refrigeration Equipment and Supplies	100
5082	Construction and Mining (Except Petroleum) Machinery and Equipment	100
5083	Farm and Garden Machinery and Equipment	100
5084	Industrial Machinery and Equipment	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100
5091	Sporting and Recreational Goods and Supplies	100
5092	Toys and Hobby Goods and Supplies	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals	100
5099	Durable Goods, N.E.C.	100
	MAJOR GROUP 51—WHOLESALE TRADE—NONDURABLE GOODS	
5111	Printing and Writing Paper	100
5112	Stationery and Office Supplies	100
5113	Industrial and Personal Service Paper	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	100
5131	Piece Goods, Notions, and Other Dry Goods	100
5136	Men's and Boys' Clothing and Furnishings	100
5137	Women's, Children's, and Infants' Clothing and Accessories	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Packaged Frozen Foods	100
5143	Dairy Products, Except Dried or Canned	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafood	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain and Field Beans	100
5154	Livestock	100

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
5159	Farm-Product Raw Materials, N.E.C.	100
5162	Plastics Materials and Basic Forms and Shapes	100
5169	Chemical and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages	100
5191	Farm Supplies	100
5192	Books, Periodicals, and Newspapers	100
5193	Flowers, Nursery Stock, and Florists' Supplies	100
5194	Tobacco and Tobacco Products	100
5198	Paints, Varnishes, and Supplies	100
5199	Nondurable Goods, N.E.C.	100
	DIVISION G—RETAIL TRADE	
	(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	MAJOR GROUP 52—BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS	
5211	Lumber and Other Building Materials Dealers	$5.0
5231	Paint, Glass, and Wallpaper Stores	$5.0
5251	Hardware Stores	$5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	$5.0
5271	Mobile Home Dealers	$9.5
	MAJOR GROUP 53—GENERAL MERCHANDISE STORES	
5311	Department Stores	$20.0
5331	Variety Stores	$8.0
5399	Miscellaneous General Merchandise Stores	$5.0
	MAJOR GROUP 54—FOOD STORES	
5411	Grocery Stores	$20.0
5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	$5.0
5431	Fruit and Vegetable Markets	$5.0
5441	Candy, Nuts, and Confectionery Stores	$5.0
5451	Dairy Products Stores	$5.0
5461	Retail Bakeries	$5.0
5499	Miscellaneous Food Stores	$5.0
	MAJOR GROUP 55—AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	
5511	Motor Vehicle Dealers (New and Used)	$21.0
5521	Motor Vehicle Dealers (Used Only)	$17.0
5531	Auto and Home Supply Stores	$5.0
5541	Gasoline Service Stations	$6.5
5551	Boat Dealers	$5.0
5561	Recreational Vehicle Dealers	$5.0
5571	Motorcycle Dealers	$5.0
5599	Automotive Dealers, N.E.C.	$5.0
EXCEPT,	Aircraft Dealers, Retail	$7.5
	MAJOR GROUP 56—APPAREL AND ACCESSORY STORES	
5611	Men's and Boys' Clothing and Accessory Stores	$6.5
5621	Women's Clothing Stores	$6.5
5632	Women's Accessory and Specialty Stores	$5.0
5641	Children's and Infants' Wear Stores	$5.0
5651	Family Clothing Stores	$6.5
5661	Shoe Stores	$6.5
5699	Miscellaneous Apparel and Accessory Stores	$5.0
	MAJOR GROUP 57—HOME FURNITURE, FURNISHINGS, AND EQUIPMENT STORES	
5712	Furniture Stores	$5.0
5713	Floor Covering Stores	$5.0
5714	Drapery, Curtain, and Upholstery Stores	$5.0
5719	Miscellaneous Homefurnishings Stores	$5.0
5722	Household Appliance Stores	$6.5

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
5731	Radio, Television, and Consumer Electronics Stores	$6.5
5734	Computer and Computer Software Stores	$6.5
5735	Record and Prerecorded Tape Stores	$5.0
5736	Musical Instrument Stores	$5.0
	MAJOR GROUP 58—EATING AND DRINKING PLACES	
5812	Eating Places	$5.0
EXCEPT,	Food Service, Institutional	$15.0
5813	Drinking Places (Alcoholic Beverages)	$5.0
	MAJOR GROUP 59—MISCELLANEOUS RETAIL	
5912	Drug Stores and Proprietary Stores	$5.0
5921	Liquor Stores	$5.0
5932	Used Merchandise Stores	$5.0
5941	Sporting Goods Stores and Bicycle Shops	$5.0
5942	Book Stores	$5.0
5943	Stationery Stores	$5.0
5944	Jewelry Stores	$5.0
5945	Hobby, Toy, and Game Shops	$5.0
5946	Camera and Photographic Supply Stores	$5.0
5947	Gift, Novelty, and Souvenir Shops	$5.0
5948	Luggage and Leather Goods Stores	$5.0
5949	Sewing, Needlework, and Piece Goods Stores	$5.0
5961	Catalog and Mail-Order Houses	$18.5
5962	Automatic Merchandising Machine Operators	$5.0
5963	Direct Selling Establishments	$5.0
5983	Fuel Oil Dealers	$9.0
5984	Liquified Petroleum Gas (Bottled Gas) Dealers	$5.0
5989	Fuel Dealers, N.E.C.	$5.0
5992	Florists	$5.0
5993	Tobacco Stores and Stands	$5.0
5994	News Dealers and Newsstands	$5.0
5995	Optical Goods Stores	$5.0
5999	Miscellaneous Retail Stores, N.E.C.	$5.0
	DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE	
	MAJOR 60—DEPOSITORY INSTITUTIONS	
6021	National Commercial Banks	$100 million in Assets [7]
6022	State Commercial Banks	$100 million in Assets [7]
6029	Commercial Banks, N.E.C.	$100 million in Assets [7]
6035	Savings Institutions, Federally Chartered	$100 million in Assets [7]
6036	Savings Institutions, Not Federally Chartered	$100 million in Assets [7]
6061	Credit Unions, Federally Chartered	$100 million in Assets [7]
6062	Credit Unions, Not Federally Chartered	$100 million in Assets [7]
6081	Branches and Agencies of Foreign Banks	$100 million in Assets [7]
6082	Foreign Trade and International Banking Institutions	$100 million in Assets [7]
6091	Deposit Trust Facilities	$5.0
6099	Functions Related to Depository Banking, N.E.C.	$5.0
	MAJOR GROUP 61—NONDEPOSITORY INSTITUTION	
6141	Personal Credit Institutions	$5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	$5.0
6159	Miscellaneous Business Credit Institutions	$5.0
6162	Mortgage Bankers and Loan Correspondents	$5.0
6163	Loan Bankers	$5.0

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 62—SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES AND SERVICES	
6211	Security Brokers, Dealers and Flotation Companies	$5.0
6221	Commodity Contracts Brokers and Dealers	$5.0
6231	Security and Commodity Exchanges	$5.0
6282	Investment Advice	$5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C.	$5.0
	MAJOR GROUP 63—INSURANCE CARRIERS	
6311	Life Insurance	$5.0
6321	Accident and Health Insurance	$5.0
6324	Hospital and Medical Service Plans	$5.0
6331	Fire, Marine, and Casualty Insurance	1,500
6351	Surety Insurance	$5.0
6361	Title Insurance	$5.0
6371	Pension, Health and Welfare Funds	$5.0
6399	Insurance Carriers, N.E.C.	$5.0
	MAJOR GROUP 64—INSURANCE AGENTS, BROKERS, AND SERVICE	
6411	Insurance Agents, Brokers, and Service	$5.0
	MAJOR GROUP 65—REAL ESTATE	
6512	Operators of Nonresidential Buildings	$5.0
6513	Operators of Apartment Buildings	$5.0
6514	Operators of Dwellings Other Than Apartment Buildings	$5.0
6515	Operators of Residential Mobile Home Sites,	$5.0
EXCEPT,	Leasing of Building Space to Federal Government by Owners	[8] $15.0
6517	Lessors of Railroad Property	$5.0
6519	Lessors of Real Property, N.E.C.	$5.0
6531	Real Estate Agents and Managers	[8]$1.5
6541	Title Abstract Offices	$5.0
6552	Land Subdividers and Developers, Except Cemeteries	$5.0
6553	Cemetery Subdividers and Developers	$5.0
	MAJOR GROUP 67—HOLDING AND OTHER INVESTMENT OFFICES	
6712	Offices of Bank Holding Companies	$5.0
6719	Offices of Holding Companies, N.E.C.	$5.0
6722	Management Investment Offices, Open-End	$5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices	$5.0
6732	Educational, Religious, and Charitable Trusts	$5.0
6733	Trusts, Except Educational, Religious, and Charitable	$5.0
6792	Oil Royalty Traders	$5.0
6794	Patent Owners and Lessors	$5.0
6798	Real Estate Investment Trusts	$5.0
6799	Investors, N.E.C.	$5.0
	DIVISION I—SERVICES	
	MAJOR GROUP 70—HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	
7011	Hotels and Motels	$5.0
7021	Rooming and Boarding Houses	$5.0
7032	Sporting and Recreational Camps	$5.0
7033	Recreational Vehicle Parks and Campsites	$5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	$5.0
	MAJOR GROUP 72—PERSONAL SERVICES	
7211	Power Laundries, Family and Commercial	$10.5
7212	Garment Pressing, and Agents for Laundries and Drycleaners	$5.0
7213	Linen Supply	$10.5
7215	Coin-Operated Laundries and Drycleaning	$5.0
7216	Drycleaning Plants, Except Rug Cleaning	$3.5
7217	Carpet and Upholstery Cleaning	$3.5
7218	Industrial Launderers	$10.5
7219	Laundry and Garment Services, N.E.C.	$5.00
7221	Photographic Studios, Portrait	$5.0
7231	Beauty Shops	$5.0

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
7241	Barber Shops	$5.0
7251	Shoe Repair Shops and Shoeshine Parlors	$5.0
7261	Funeral Service and Crematories	$5.0
7291	Tax Return Preparation Services	$5.0
7299	Miscellaneous Personal Services, N.E.C.	$5.0
	MAJOR GROUP 73—BUSINESS SERVICES	
7311	Advertising Agencies	[6] $5.0
7312	Outdoor Advertising Services	[6] $5.0
7313	Radio, Television, and Publishers' Advertising Representatives	$5.0
7319	Advertising, N.E.C.	[6] $5.0
7322	Adjustment and Collection Services	$5.0
7323	Credit Reporting Services	$5.0
7331	Direct Mail Advertising Services	$5.0
7334	Photocopying and Duplicating Services	$5.0
7335	Commerical Photography	$5.0
7336	Commercial Art and Graphic Design	$5.0
7338	Secretarial and Court Reporting Services	$5.0
7342	Disinfecting and Pest Control Services	$5.0
7349	Building Cleaning and Maintenance Services, N.E.C.	$12.0
7352	Medical Equipment Rental and Leasing	$5.0
7353	Heavy Construction Equipment Rental and Leasing	$5.0
7359	Equipment Rental and Leasing, N.E.C.	$5.0
7361	Employment Agencies	$5.0
7363	Help Supply Services	$5.0
7371	Computer Programming Services	$18.0
7372	Prepackaged Software	$18.0
7373	Computer Integrated Systems Design	$18.0
7374	Computer Processing and Data Preparation and Processing Services	$18.0
7375	Information Retrieval Services	$18.0
7376	Computer Facilities Management Services	$18.0
7377	Computer Rental and Leasing	$18.0
7378	Computer Maintenance and Repair	18.0
7379	Computer Related Services, N.E.C.	18.0
7381	Detective, Guard, and Armored Car Services	$.0
7382	Security Systems Services	9.0
7383	News Syndicates	5.0
7384	Photofinishing Laboratories	5.0
7389	Business Services, N.E.C.	5.0
EXCEPT,	Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services	$3.5
	MAJOR GROUP 75—AUTOMOTIVE REPAIR, SERVICES, AND PARKING	
7513	Truck Rental and Leasing, Without Drivers	$18.5
7514	Passenger Car Rental	18.5
7515	Passenger Car Leasing	18.5
7519	Utility Trailer and Recreational Vehicle Rental	5.0
7521	Automobile Parking	5.0
7532	Top, Body, and Upholstery Repair Shops and Paint Shops	5.0
7533	Automotive Exhaust System Repair Shops	5.0
7534	Tire Retreading and Repair Shops	10.5
7536	Automotive Glass Replacement Shops	5.0
7537	Automotive Transmission Repair Shops	5.0
7538	General Automotive Repair Shops	5.0
7539	Automotive Repair Shops, N.E.C.	5.0
7542	Carwashes	5.0
7549	Automotive Services, Except Repair and Carwashes	5.0
	MAJOR GROUP 76—MISCELLANEOUS REPAIR SERVICES	
7622	Radio and Television Repair Shops	5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	5.0
7629	Electrical and Electronic Repair Shops, N.E.C.	5.0
7631	Watch, Clock, and Jewelry Repair	5.0
7641	Reupholstery and Furniture Repair	5.0
7692	Welding Repair	5.0
7694	Armature Rewinding Shops	5.0
7699	Repair Shops and Related Services, N.E.C.	[9] 5.0

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 78—MOTION PICTURES	
7812	Motion Picture and Video Tape Production	21.5
7819	Services Allied to Motion Picture Production	21.5
7822	Motion Picture and Video Tape Distribution	21.5
7829	Services Allied to Motion Picture Distribution	5.0
7832	Motion Picture Theaters, Except Drive-In	5.0
7833	Drive-In Motion Picture Theaters	5.0
7841	Video Tape Rental	5.0
	MAJOR GROUP 79—AMUSEMENT AND RECREATION SERVICES	
7911	Dance Studios, Schools, and Halls	5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	5.0
7933	Bowling Centers	5.0
7941	Professional Sports Clubs and Promoters	5.0
7948	Racing, Including Track Operation	5.0
7991	Physical Fitness Facilities	5.0
7993	Coin-Operated Amusement Devices	5.0
7996	Amusement Parks	5.0
7997	Membership Sports and Recreation Clubs	5.0
7999	Amusement and Recreation Services, N.E.C.	5.0
	MAJOR GROUP 80—HEALTH SERVICES	
8011	Offices and Clinics of Doctors of Medicine	$5.0
8021	Offices and Clinics of Dentists	5.0
8031	Offices and Clinics of Doctors of Osteopathy	5.0
8041	Offices and Clinics of Chiropractors	5.0
8042	Offices and Clinics of Optometrists	5.0
8043	Offices and Clinics of Podiatrists	5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	5.0
8051	Skilled Nursing Care Facilities	5.0
8052	Intermediate Care Facilities	5.0
8059	Nursing and Personal Care Facilities, N.E.C.	5.0
8062	General Medical and Surgical Hospitals	5.0
8063	Psychiatric Hospitals	5.0
8069	Specialty Hospitals, Except Psychiatric	5.0
8071	Medical Laboratories	5.0
8072	Dental Laboratories	5.0
8082	Home Health Care Services	5.0
8092	Kidney Dialysis Centers	5.0
8093	Specialty Outpatient Facilities, N.E.C.	5.0
8099	Health and Allied Services, N.E.C.	5.0
	MAJOR GROUP 81—LEGAL SERVICES	
8111	Legal Services	$5.0
	MAJOR GROUP 82—EDUCATIONAL SERVICES	
8211	Elementary and Secondary Schools	$5.0
8221	Colleges, Universities, and Professional Schools	$5.0
8222	Junior Colleges and Technical Institutes	$5.0
8231	Libraries	$5.0
8243	Data Processing Schools	$5.0
8244	Business and Secretarial Schools	$5.0
8249	Vocational Schools, N.E.C.	$5.0
8299	Schools and Educational Services, N.E.C.	$5.0
EXCEPT,	Flight Training Services	$18.5
	MAJOR GROUP 83—SOCIAL SERVICES	
8322	Individual and Family Social Services	$5.0
8331	Job Training and Vocational Rehabilitation Services	$5.0
8351	Child Day Care Services	$5.0
8361	Residential Care	$5.0
8399	Social Services, N.E.C.	$5.0

SIC	Size standards by SIC industry description (N.E.C.=Not Elsewhere Classified) (See Endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 84—MUSEUMS, ART GALLERIES, AND BOTANICAL AND ZOOLOGICAL GARDENS	
8412	Museums and Art Galleries	$5.0
8422	Arboreta and Botanical or Zoological Gardens	$5.0
	MAJOR GROUP 86—MEMBERSHIP ORGANIZATIONS	
8611	Business Associations	$5.0
8621	Professional Membership Organizations	$5.0
8631	Labor Unions and Similar Labor Organizations	$5.0
8641	Civic, Social, and Fraternal Associations	$5.0
8651	Political Organizations	$5.0
8661	Religious Organizations	$5.0
8699	Membership Organizations, N.E.C.	$5.0
	MAJOR GROUP 87—ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED SERVICES	
8711	Engineering Services	$2.5
EXCEPT,	Military and Aerospace Equipment and Military Weapons	$20.0
EXCEPT,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	$20.0
EXCEPT,	Marine Engineering and Naval Architecture	$13.5
8712	Architectural Services	$2.5
8713	Surveying Services	$2.5
8721	Accounting, Auditing and Bookkeeping Services	$6.0
8731	Commercial Physical and Biological Research	[10] $500
EXCEPT,	Aircraft	1,500
EXCEPT,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts	1,000
EXCEPT,	Space Vehicles and Guided Missiles, their Propulsion Units, their propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
8732	Commercial Economic, Sociological, and. Educational Research	$5.0
8733	Noncommercial Research Organizations	$5.0
8734	Testing Laboratories	$5.0
8741	Management Services	$5.0
EXCEPT,	Conference Management Services	[6] $5.0
8742	Management Consulting Services	$5.0
8743	Public Relations Services	$5.0
8744	Facilities Support Management Services	[11] $5.0
EXCEPT,	Base Maintenance	[12] $20.0
EXCEPT,	Environmental Remediation Services	[13] $500
8748	Business Consulting Services, N.E.C.	$5.0
	MAJOR GROUP 89—SERVICES, NOT ELSEWHERE CLASSIFIED	
8999	Services, N.E.C.	$5.0
	DIVISION K—NONCLASSIFIABLE ESTABLISHMENTS	
9999	Nonclassifiable Establishments	$5.0

Endnotes

1. SIC code 1629—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

2. SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

3. SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(2) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. SIC codes 4724, 6531, 7311, 7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

7. A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. Assets for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

8. SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

9. SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC code 3728.

10. SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(3) Research and development for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

11. Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

12. SIC code 8744

(1) If one of the activities of base maintenance, as defined in paragraph (2) of this endnote, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) ''Base Maintenance'' requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as ''Base Maintenance.''

13. SIC code 8744

(1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction, Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage, Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Dated: December 23, 1997.

Gary M. Jackson,

Assistant Administrator for Size Standards.

[FR Doc. 98–286 Filed 1–6–98; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 21, 1997 [62 FR 54679–54680].

DATES: Comments must be submitted on or before February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, (202) 267–2326, Department of Transportation, 2100 Second Street, SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION:

United States Coast Guard (USCG)

Title: Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB No.: 2115–0617.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Vessel owners of certain inspected vessels.

Abstract: This collection requires the submission of identifying information such as vessel name, vessel identification number and if the owner chooses to pay fees for future years, a written request to the Coast Guard is required.

Need: The Omnibus Budget Reconciliation Act of 1990, which amended 46 U.S.C. 2110, now requires the Coast Guard to collect user fees from inspected vessels. In order to properly track the collection and management of fees, the Coast Guard must have current identification information. This collection helps to ensure that fee collection is carried out efficiently.

Estimated Annual Burden Hours: 2,855 hours.

Number of Respondents: 11,929.

Title: U.S. Coast Guard Academy Preliminary Application and Supplemental Forms.

OMB No.: 2115–0012.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Men and Women between the ages of 17 and 22.

Abstract: This collection of information will require individuals who wish to compete for an appointment as a Coast Guard Cadet to fill out Preliminary and Supplement Application Forms.

Need: Title 46 U.S.C. 211(a) authorizes the Superintendent of the U.S. Coast Guard Academy to ensure that qualified individuals have every opportunity to compete for a cadet appointment.

Estimated Annual Burden Hours: 6,640 hours.

Number of Respondents: 13,600.

Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB No.: 2115–0016.

Type of Request: Extension of a currently approved collection.

Affected Public: Chemical manufacturers.

Abstract: This requires manufacturers of chemicals to submit data on new materials. From this information, the Coast Guard determines the appropriate precautions to be taken.

Need: Under 46 CFR 30–40, 151, 153, and 154, the Coast Guard regulates the transportation of hazardous materials. Due to the nature of the chemical industry, new materials are being produced which must be shipped. Each of these new materials has unique characteristics which require special attention to their mode of shipment.

Estimated Annual Burden Hours: 300 hours.

Number of Respondents: 25.

Title: 33 CFR 157—Requirements for the installation and use of oil discharge monitoring equipment for tank vessels and International Oil Pollution Prevention Certificates.

OMB No.: 2115–0518.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Owners or operators of U.S. flag tank vessels, 150 gross tons or more for discharge data. Owners or operator of U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above that engage in international voyages for IOPP Certificates (IOPP).

Abstract: This collection of information requires U.S.flag tank vessels, 150 gross tons or more, to maintain oily mixture discharge data. Also U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above that engage in international voyages are required to have an IOPP Certificate. This collection is a combination of OMB Nos. 2115–0526 and 2115–0518 under one OMB approval number.

Estimated Annual Burden Hours: 784 hours.

Number of Respondents: 1,230.

Title: Emergency Evacuation Plan for Manned Facilities.

OMB No.: 2115–0580.

Type of Request: Extension of a currently approved collection

Affected Public: Operators of manned OCS facilities and MODUs.

Abstract: The collection of information requires the operators of manned OCS facilities, including Mobile Offshore Drilling Units, (MODUs) to submit facility emergency evacuation plans (EEPS) to the U.S. Coast Guard.

Need: Under 43 U.S.C. Section 133(d), the Coast Guard has the authority to promulgate and enforce reasonable regulations promoting the safety of life and property on OCS facilities. Pub. L. 99–509 required the Coast Guard to issue regulations for the evaluation of personnel from manned OCS facilities. This information is used by the Coast Guard to ensure that these facilities establish and maintain efficient and safe methods for evaluation.

Estimated Annual Burden Hours: 3,460 hours.

Number of Respondents: 1,045.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 31, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–323 Filed 1–6–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33501]

Douglas M. Head, Kent P. Shoemaker and Charles H. Clay—Continuance in Control Exemption—Rutland Line, Inc

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 11323–25, the continuance in control by Douglas M. Head, Kent P. Shoemaker and Charles H. Clay of Rutland Line, Inc.

DATES: This exemption will be effective on February 6, 1998. Petitions to stay must be filed by January 20, 1998. Petitions to reopen must be filed by January 27, 1998.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33501, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative, Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services at (202) 565–1695.]

Decided: December 11, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–248 Filed 1–6–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 557X)]

CSX Transportation, Inc.—Abandonment Exemption—in Atkinson County, GA

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 0.51 miles of its line of railroad between milepost AP–617.94 and milepost AP–618.45 at the end of track, in Pearson, Atkinson County, GA. The line traverses United States Postal Service Zip Code 31642.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 6, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 20, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 27, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 12, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by January 7, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: December 29, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–247 Filed 1–6–98; 8:45 am]

BILLING CODE 4915–00–P

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

Corrections

Federal Register

Vol. 63, No. 4

Wednesday, January 7, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Application of the NYFE for Designation as a Contract Market in Futures on the NYSE Small Composite Index

Correction

In notice document 97–33627, beginning on page 67630, in the issue of Monday, December 29, 1997 make the following correction:

On page 67630, in the third column, in the **DATES** section, ''January 8, 1998'' should read ''January 13, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ASO-15]

Amendment of Class E Airspace; Birmingham, AL

Correction

In rule document 97–33620 beginning on page 67267, in the issue of Wednesday, December 24, 1997, make the following correction:

§ 71.1 [Corrected]

On page 67267, in the third column, under the heading **ASO FL E5 Birmingham, AL [Revised]**, in the second line, '' long. 86°45′24″W) should read '' long. 86°45′13″W)

BILLING CODE 1505-01-D

federal register

Wednesday
January 7, 1998

Part II

Environmental Protection Agency

40 CFR Parts 9, 85, and 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: State Commitments to National Low Emission Vehicle Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 85, and 86

[AMS–FRL–5938–8]

RIN 2060–AF75

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: State Commitments to National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is finalizing the necessary federal regulations for a voluntary clean car program called the National Low Emission Vehicle (''National LEV'') program, which is designed to reduce smog and other pollution from new motor vehicles. The program will come into effect only if the northeastern states (members of the Ozone Transport Commission or ''OTC'') and the auto manufacturers sign up for it. The National LEV regulations allow manufacturers to commit to meet tailpipe standards for cars and light light-duty trucks that are more stringent than EPA can mandate. Manufacturers have said they would be willing to commit to the program if the OTC States also make binding commitments to the program. Once the program comes into effect, it would be enforceable in the same manner as any other federal new motor vehicle program.

After spending years helping to develop the program, the OTC States and the auto manufacturers must now decide whether to commit to it and allow the country to benefit from significant reductions in pollution. National LEV would also achieve the same (or better) emission reductions in the Ozone Transport Region (OTR) as would OTC State adopted new motor vehicle programs. Under National LEV there would be substantial harmonization of federal and California new motor vehicle standards and test procedures, which would enable manufacturers to design and test vehicles to one set of standards nationwide. The program would demonstrate how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

DATES: This regulation is effective January 7, 1998. The information collection requirements contained in this rule has been approved by the Office of Management and Budget (OMB) and has an assigned OMB control number of 2060–0345.

ADDRESSES: Materials relevant to this final rule have been placed in Public Docket No. A–95–26. The docket is located at the Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400) in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:00 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials. For further information on electronic availability of this final rule, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Karl Simon, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone (202) 260–3623; Fax (202) 260–6011; e-mail simon.karl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated entities

Entities potentially regulated by this action are those that manufacture and sell motor vehicles in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in § 86.1701–99. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, response to comments document, and other related documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic **Federal Register** version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)

2. http://www.epa.gov/OMSWWW/lev-nlev.htm

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Outline

The preamble is organized into the following sections.

II. Background [1]

Today's Final Rule (FRM) is another step towards a voluntary clean car program (''National LEV'') that can help control emissions nationwide as well as in the northeastern states. As discussed in previous **Federal Register** notices,[2] there have been a number of regulatory and other steps in the development of this program. Today's notice concludes the federal regulatory steps necessary to set up the voluntary clean car program, which will then come into effect if the auto manufacturers and the OTC States commit to it. In June of this year, EPA published a final rule setting forth the framework for the program, including the specific standards that would apply to new motor vehicles if manufacturers opted in. *See* 62 FR 31192 (June 6, 1997) (''Final Framework Rule''). Today's rule finalizes the regulations for the National LEV program. It is now up to the OTC States and the auto manufacturers to determine whether the program will come into effect.

Under the National LEV program, auto manufacturers will have the option of agreeing to comply with tailpipe standards that are more stringent than EPA can mandate prior to model year (MY) 2004. Once manufacturers commit to the program, the standards will be enforceable in the same manner that other federal motor vehicle emissions control requirements are enforceable. See the Final Framework Rule at 62 FR 31201–31223 for a detailed discussion of the program structure, tailpipe and related standards, and legal authority for and enforceability of National LEV. Manufacturers have indicated their willingness to volunteer to meet these tighter emissions standards if EPA and the northeastern states (i.e., those in the Ozone Transport Commission (OTC) or the ''OTC States'') agree to certain conditions, including providing manufacturers with regulatory stability and reducing regulatory burdens by harmonizing federal and California motor vehicle emissions standards.

The National LEV program has been developed through an unprecedented, cooperative effort by the OTC States, auto manufacturers, environmentalists, fuel providers, EPA and other interested parties. The OTC States and environmentalists provided the opportunity for this cooperative effort by pushing for adoption of the California Low Emission Vehicle (CAL LEV) program throughout the northeast Ozone Transport Region (OTR). Under EPA's leadership, the states, auto manufacturers, environmentalists, and other interested parties then embarked on a process to develop a voluntary National LEV program, a process marked by extensive public participation and a focus on joint problem solving. See the Final Framework Rule at 62 FR 31199 and the NPRM at 60 FR 52739–52740 for further discussion of public participation in the National LEV decision making process.

National LEV will provide public health and environmental benefits by reducing air pollution nationwide. Both inside and outside the OTR, National LEV will reduce ground level ozone, the principle harmful component in smog, as well as emissions of other pollutants, including particulate matter (PM), benzene, and formaldehyde. The Final Framework Rule contains a substantive discussion on the health and environmental benefits of the National LEV program. *See* 62 FR 31195. EPA has determined that the National LEV program will result in emissions reductions in the OTR that are equivalent to or greater than the emissions reductions that would be achieved through adoption of the CAL LEV program in the OTR. National LEV will also provide manufacturers regulatory stability and reduce regulatory burden by harmonizing federal and California motor vehicle standards. This will reduce testing and design costs for motor vehicles, as well as allow more efficient distribution and marketing of vehicles nationwide. See the Final Framework Rule at 60 FR 31195–31197 and 31224 for further discussion of the benefits of the National LEV program.

In addition to the national public health benefits that would result from National LEV, the program has been motivated largely by the OTC's efforts to reduce motor vehicle emissions either by adoption of the CAL LEV program throughout the OTR or by adoption of the National LEV program. One of the OTC States' efforts was a petition the OTC filed with EPA. On December 19, 1994, EPA approved this petition, which requested that EPA require all OTC States to adopt the CAL LEV program (called the Ozone Transport Commission Low Emission Vehicle (OTC LEV) program). *See* 60 FR 4712 (January 24, 1995) (''OTC LEV Decision''). See the Final Framework Rule at 60 FR 31195 for a summary of EPA's decision. In March, 1997, the U.S. Court of Appeals for the District of Columbia affirmed states' rights to adopt the CAL LEV program, but reversed EPA's decision requiring the OTC States to do so. *Virginia* v. *EPA,* 108 F.3d 1397 (D.C. Cir. 1997). Some, but not all, OTC States have adopted CAL LEV programs to date.

Given statutory constraints on EPA, National LEV will be implemented only if it is agreed to by the OTC States and the auto manufacturers. EPA does not have authority to force either the OTC States or the manufacturers to sign up to the program. EPA cannot require the auto manufacturers to meet the National LEV standards, absent the manufacturers' consent, because section 202(b)(1)(C) of the Clean Air Act (CAA, or ''the Act'') prevents EPA itself from mandating new exhaust standards applicable before model year 2004. The auto manufacturers have indicated that they would be willing to opt into

[1] Although this section contains a brief summary of the National LEV program and the process that led up to it, this notice assumes that the reader has an in-depth understanding of the National LEV program and is familiar with the previous National LEV rulemaking notices (i.e., the August, 1997, Supplemental Notice of Proposed Rulemaking (SNPRM); the October, 1995, Notice of Proposed Rulemaking (NPRM); and the June, 1997, Final Framework Rule cited in n.2). Readers should review those documents for in-depth discussion of the program, the process and other background information.

[2] See 60 FR 4712 (Jan. 24, 1995), 60 FR 52734 (Oct. 10, 1995); 62 FR 31192 (June 6, 1997); 62 FR 44754 (Aug. 22, 1997).

National LEV only if the OTC States make certain commitments, including committing to allow the manufacturers to comply with National LEV in lieu of certain CAL LEV programs adopted under section 177 of the CAA (Section 177 Programs). EPA cannot require the OTC States to make such commitments (although EPA can issue regulations to help make the commitments enforceable). Thus, National LEV cannot come into effect absent the agreement of the auto manufacturers and the OTC States.

Over the past several years, the OTC States and the auto manufacturers have conducted negotiations to develop an agreement on National LEV to be contained in a Memorandum of Understanding (MOU). The parties have reached agreement on most provisions of the National LEV program. Each side has sent EPA an MOU that it has initialed, indicating its agreement with the National LEV program as contained in that Memorandum of Understanding.[3] Although there are differences in the two Memoranda, they show that agreement has been reached between the OTC States and the auto manufacturers on most of the provisions of the National LEV program. Based on the MOUs provided to the Agency, EPA issued the Final Framework Rule on June 6, 1997, setting the framework for and describing most of the elements of the National LEV program.

Although the parties had hoped to jointly sign a comprehensive MOU affirming their mutual agreement on the National LEV program, the parties now agree that further discussions are unlikely to result in resolution of the last outstanding issues. Nonetheless, EPA and the parties believe that National LEV would provide substantial public health and environmental benefits. Failure to come to agreement on a National LEV program would be a significant lost opportunity to improve the nation's air quality.

EPA believes there is sufficient common ground between the parties to provide a basis for a National LEV program to which all parties could agree to opt into. EPA believes that finalizing a program for the OTC States and manufacturers to evaluate as a whole presents the greatest likelihood that the country will achieve the benefits of National LEV, on which many stakeholders worked hard over the years. EPA encourages the auto manufacturers and OTC States to opt in so the country does not lose the significant benefits of National LEV.

[3] See Docket No. A–95–26, IV–G–31 and IV–G–34.

Today's final rule (FRM) finalizes regulations on issues relating to how the OTC States will voluntarily opt in to the National LEV program and commit to allow motor vehicle manufacturers to comply with the National LEV program in lieu of state Section 177 Programs. These issues include the duration of the OTC State commitments, the instruments and process through which the OTC States will commit to the program, and the substantive details of their commitments.

Today's FRM also addresses several other outstanding structural details of the National LEV program. These provisions include the timing of OTC State and auto manufacturer opt-ins to the National LEV program, incentives for the parties to keep their commitments to the National LEV program and conditions under which OTC States and manufacturers could exit the program (''offramps''), and the start date of the National LEV program.

In addition, today's FRM includes several modifications and clarifications of several issues addressed to some extent in the Final Framework Rule. These include provisions relating to how the off-cycle supplemental federal test procedure would apply to National LEV vehicles and provisions relating to banking and trading of emissions credits. For additional explanation of the rationale for today's rule and responses to comments, see the Summary and Analysis of Comments for the Final Rule.

III. National LEV Start Date

In the SNPRM, EPA proposed to have the National LEV program start in MY1999, which reflected a change from the original proposed start date of MY1997.[5] See 62 FR 44756–57. EPA explained that this change in the start date was necessary because requiring a start date of MY1997 or MY1998 was unrealistic given the delays associated with finalizing the program and the inability of manufacturers to produce and certify National LEV vehicles before MY1999. Additionally, EPA noted that there was no longer a legal requirement for National LEV to produce emissions reductions at least equivalent to those that would be produced by OTC LEV due to the court case overturning EPA's decision granting the OTC's petition. (See *Virginia* v. *EPA, supra.*) EPA received no negative comments regarding this proposed change in program start date. EPA is today finalizing its proposal to have the National LEV program start in MY1999 in the OTR.

[5] The National LEV program will start in MY2001 nationwide. The nationwide start date was not at issue in the SNPRM.

The change in program start date reflects in part EPA's belief that, given the voluntary nature of the National LEV program, it would be unreasonable to retain the MY1997 start date and have the program begin with some manufacturers having debits from not meeting the fleet average NMOG standards for MY1997 and MY1998. Such debits would be difficult to erase given the increasing stringency of the fleet average NMOG standards and the limited ability of manufacturers to modify their production plans quickly, once the program is in effect, to manufacture a number of National LEV vehicles sufficient to demonstrate compliance with the applicable fleet average NMOG standards.

The MY1999 start date for the National LEV program does not mean that the program is being delayed two years, but merely that the National LEV requirements for MY1997 and MY1998 are being dropped from the regulations. Therefore, the fleet average NMOG standards for MY1999 are 0.148 g/mi for light-duty vehicles and light-duty trucks (0–3750 pounds LVW) and 0.190 g/mi for light-duty trucks between 3750–5750 pounds LVW. As stated above, the MY2001 nationwide fleet average NMOG standards remain unchanged.

EPA also took comment on allowing manufacturers to sell California-certified vehicles[6] instead of National LEV vehicles throughout the Northeast Trading Region (NTR) for MY1999 and MY2000 as a means to help manufacturers meet their fleet average NMOG standards for these two model years. Manufacturers expressed concern that they might have difficulty producing and certifying National LEV vehicles for MY1999 given that certification of MY1999 vehicles will likely start before EPA is able to find that National LEV is in effect. EPA believes it is appropriate to provide some limited flexibility to manufacturers in a way that does not undercut the environmental benefits of the fleet average NMOG standards in the first year of the program. Thus, for MY1999 only, EPA will issue federal National LEV certificates that will allow manufacturers to sell California-certified TLEV, LEV, ULEV, and ZEV vehicles throughout the NTR and will count

[6] ''California-certified vehicles'', as the term is used in this rule, are those vehicles which have received an Executive Order from California and a federal certificate of conformity which allows the sale of such vehicles only in the state of California and other states that have adopted the California motor vehicle emission standards under Section 177 of the Clean Air Act.

those vehicles to determine compliance with National LEV requirements. For MY2000, EPA will also issue certificates that will allow manufacturers to sell California-certified TLEVs throughout the NTR and to count those vehicles to determine compliance with National LEV requirements.

The harmonization of the federal and California motor vehicle emission requirements have left few differences between National LEV and California-certified TLEV and cleaner vehicles. EPA believes that production and certification of vehicles meeting both federal and California requirements, done currently by some manufacturers, should be much more attractive when the National LEV program is in effect. However, program differences do exist and federal requirements such as the Certification Short Test (CST) and high-altitude requirements remain part of the federal program.[7] Using Federal certificates to allow manufacturers to certify and sell MY1999 California-certified TLEVs, LEVs, ULEVs, and ZEVs throughout the NTR will give them an additional mechanism to comply with the fleet average NMOG standards by increasing the production and sale of their California-certified vehicles. Manufacturers may still certify and sell National LEV vehicles for MY1999 using the National LEV program requirements, and such vehicles could be sold nationwide. EPA is not allowing sale of California Tier 1 vehicles throughout the NTR because EPA does not believe that certification of vehicles to California Tier 1 standards proves that such vehicles meet the Federal Tier 1 tailpipe emission standards and EPA cannot justify replacing Federal Tier 1 vehicles with California Tier 1 vehicles in the federal motor vehicle emissions program. EPA has consistently taken this position on California Tier 1 vehicles throughout the development of the National LEV program.

California-certified TLEVs, LEVs, ULEVs and ZEVs can be sold in the NTR in MY1999 if they receive a federal National LEV certificate. This certificate will state that, for MY1999, a California-certified vehicle sold in the NTR only will be considered a National LEV vehicle and meet all National LEV requirements. EPA believes that the compliance testing done to obtain a California certificate of conformity for these vehicle categories is sufficient to meet the certification requirements for the National LEV program in MY1999. Allowing California certification to substitute for National LEV certification for vehicles sold in the NTR does not mean that EPA is waiving compliance with the Certification Short Test (CST) and high-altitude requirements. However, EPA believes that a vehicle complying with the MY1999 California TLEV, LEV, ULEV, or ZEV emission standards will also most likely meet the Federal Tier 1 CST and high-altitude requirements. Currently, Federal Tier 1 vehicles are being certified as meeting the CST and high-altitude requirements and EPA, in its certification review and testing, has not identified any problems manufacturers have had in complying with these two requirements. EPA expects that California-certified TLEVs, LEVs, ULEVs, and ZEVs would also meet the Federal Tier 1 CST and high-altitude certification requirements and is thus willing to allow a degree of uncertainty regarding actual demonstration of compliance with these requirements in MY1999 in order to facilitate the start of the National LEV program for those manufacturers which may find it difficult to certify and sell National LEV vehicles in the NTR. EPA does not believe it is appropriate to waive demonstration with these requirements beyond MY1999 because manufacturers will have had sufficient time to incorporate compliance with the CST and high-altitude requirements into their MY2000 National LEV vehicles. EPA believes there should be minimal adverse environmental impact from substituting California-certified TLEVs, LEVs, ULEVs and ZEVs for National LEV vehicles in MY1999.

Today's Final Rule addresses the issue of National LEV vehicle sales in MY1999 by issuing a Federal National LEV certificate to those vehicles sold in the NTR instead of expanding current policies and allowing the sale of California-certified vehicles throughout the NTR. By granting a Federal certificate to these vehicles, EPA retains its authority to enforce the provisions of the National LEV program. Compliance with many of these provisions, such as compliance with the fleet average NMOG requirements and credit trading, is dependent on meeting conditions associated with the National LEV certificate. EPA is not waiving compliance with the National LEV requirements in the NTR in MY1999. By requiring a federal National LEV certificate for MY1999 California-certified vehicles sold in the NTR, this provision ensures that EPA may enforce all of the National LEV regulations applicable to MY1999 vehicles.[8] California-certified vehicles receiving a Federal National LEV certificate allowing sale in the NTR may not be sold outside the NTR.

EPA believes it is also appropriate to issue Federal certificates that will allow manufacturers to sell California-certified TLEVs throughout the NTR in MY2000. As discussed below in sections VIII.E and IX, EPA does not expect manufacturers to produce and sell many TLEVs after MY2000 because other provisions in the National LEV and California LEV programs will provide incentives and requirements which will minimize TLEV production. EPA believes it would be more environmentally beneficial and cost-effective to have manufacturers use their resources to certify and produce cleaner LEVs and ULEVs rather than TLEVs, which will shortly be phased out of production.[9] Issuing Federal certificates to allow manufacturers to sell California-certified TLEVs in the NTR in MY2000 does not mean that more TLEVs will be sold in this region because manufacturers will still need to demonstrate compliance with the fleet average NMOG standard in the NTR in MY2000, and all TLEVs sold in the NTR are to be included in the compliance calculations. Instead, EPA is making the determination that the environmental benefits of issuing Federal certificates allowing the sale of California-certified TLEVs in the NTR in MY2000 outweighs the cost and any environmental detriment associated with manufacturers not completing all of the testing generally required to meet the certification requirements necessary to produce and sell a National LEV TLEV in the NTR in MY2000. EPA is not waiving compliance with any National LEV standards, but is accepting California certification as sufficient to

[7] There are different federal and California test procedures for evaporative emissions. Manufacturers generally use the option in California's regulations which allows testing using the federal requirements. EPA expects manufacturers will continue using this option when certifying vehicles for sale in California. The National LEV program requires emission testing using the federal requirements.

[8] The manufacturers have suggested that EPA address the issue of MY1999 and MY2000 vehicles through expansion of the cross border sales policy, which currently allows sales of vehicles certified to California's emissions standards and other requirements in states contiguous to, or within 50 miles of, California and states that have a program adopted under section 177 in place. See note 49 for further discussion of the cross border sales policy. The approach that EPA is adopting in today's rule is separate from and will have no effect on the cross border sales policy.

[9] Manufacturers can continue to produce and sell TLEV vehicles after MY2000 under the National LEV and California LEV programs as long as they obtain a National LEV certificate for the TLEVs and meet the applicable fleet average NMOG standards. EPA is not requiring manufacturers to discontinue TLEV production, which remains a manufacturer decision.

demonstrate compliance with TLEV standards for the purpose of certification.

This special provision regarding the sale of California-certified TLEVs is applicable only in the NTR and only in MY2000. This provision is intended to provide manufacturers with flexibility in meeting the fleet average NMOG standards in the NTR. When the National LEV requirements are effective nationally in MY2001, however, manufacturers' full production efforts will be focused on meeting California and National LEV requirements. If a manufacturer plans to continue producing TLEVs after MY2000, then such vehicles must meet all of the National LEV requirements, including the CST and high-altitude requirements. In meeting the certification requirements for a MY2001 National LEV TLEV, manufacturers may carry over any appropriate data from their MY2000.

EPA is not issuing Federal certificates allowing California-certified vehicles to be sold under National LEV outside the NTR in MY1999. There is no justification for allowing such sales and, unlike in the NTR, there is no requirement that manufacturers produce anything but Federal Tier 1 vehicles. If manufacturers wish to generate early reduction credits in the All State Trading Region in MY1999 and MY2000, they must do so using National LEV vehicle sales in that region.

IV. National LEV Will Produce Larger VOC and NO_X Emission Reductions in the OTR Compared to OTC State Adopted Section 177 Programs

Modeling done in support of the Final Framework Rule showed that the National LEV program would provide greater emission reductions than those from OTC LEV (which is equivalent to state-by-state adoption of the CAL LEV program throughout the OTR). *See* 62 FR 44757. The SNPRM proposed several changes to modeling assumptions. As proposed, and in light of public comments, EPA has modified some of the assumptions in the modeling, particularly regarding when various programs would start. This modeling supports EPA's conclusion in today's rule that, given current assumptions and best information about future vehicle performance [10] and the migration of people and vehicles, the NO_X and VOC emission reductions from National LEV are equivalent to or greater than those from state-by-state adoption of Section 177 Programs throughout the OTR.

The first set of changes to the modeling relates to the start dates of National LEV and Section 177 Programs. As proposed in the SNPRM, the updated modeling includes a start date of MY1999 (rather than MY1997) for the National LEV program. The updated modeling analysis for the OTC State Section 177 Programs (in the absence of National LEV) also more accurately reflects expected reductions from OTC State Section 177 Programs than did the analysis described in the Final Framework Rule. The modeling for that rule assumed that all of the OTC States had Section 177 Programs in effect for MY1999 and later. In reality, only six of the OTC States have adopted programs that could be effective in MY1999 and there is no longer a specific legal requirement for the other states to adopt a Section 177 Program. Thus, EPA's analysis assumes Section 177 Programs will exist only in those OTC States that have adopted a Section 177 Program.[11] EPA believes that this realistic assumption is the proper comparison to National LEV since legally, individual state adoption is the only manner in which California vehicles can be required in the Northeast.

EPA believes its current modeling makes the appropriate assumptions and correctly estimates a realistic level of OTC State Section 177 Programs. However, to test its assumptions, EPA also ran as a third case a sensitivity analysis assuming that all of the OTC States adopted Section 177 Programs. For the six OTC States without a Section 177 Program in place as of July 1, 1997, EPA assumed that the programs became effective in MY2001, the earliest time a state that had not yet adopted a Section 177 Program could legally enforce such a program, given the two year lead time requirement in section 177 of the Act. This analysis showed that, even with all 13 OTC States having a Section 177 Program in place at the earliest possible times, National LEV still provided greater emission reductions in the Northeast.

EPA has also changed some of its modeling assumptions regarding the status of federal and state motor vehicle programs in MY2005 and later, in part as a result of changes EPA made regarding the duration of National LEV. To the extent possible, EPA has attempted to make these new assumptions, which affect all three cases analyzed by EPA, consistent from one case to the next. Although EPA has made assumptions regarding future regulatory actions, these assumptions in no way limit EPA's options in future regulatory actions, nor do they indicate that EPA has prejudged those future actions.

In the National LEV case, EPA assumes National LEV will be in place in all OTC States through MY2005, which is the latest model year the program would be considered a compliance alternative in those OTC States which have adopted a Section 177 Program if EPA issues Tier 2 standards at least as stringent as National LEV standards by December 15, 2000. In MY2006, the seven OTC States with Section 177 Programs already adopted are assumed, for modeling purposes, to have those programs go into effect.[12] The model assumes the rest of the country will have a Tier 2 program which, for modeling purposes, is considered to be equivalent to the National LEV program.

The two modeling cases which analyze emission reductions without the National LEV program assume, for modeling purposes, that a Tier 2 program equivalent to National LEV would go into effect in MY2005. One case assumes Tier 1 standards in effect until then in those states that have not adopted a Section 177 Program. The other case assumes Tier 1 standards in effect until then in all states outside the OTR (except California). The MY2005 start date for Tier 2 was chosen as a reasonable estimation for modeling purposes, given the National LEV program deadline of December 15, 2000

[10] EPA's National LEV modeling does not incorporate any factors relating to the effect of fuel sulfur levels on the emissions performance of National LEV vehicles, outside of any factors already included in the MOBILE 5a model. Studies being conducted by the auto and oil industries analyzing the impact of sulfur on the emissions performance of LEV vehicles are ongoing. EPA has not attempted to quantify a sulfur impact on National LEV vehicle emissions as part of the equivalency modeling because the studies and associated analyses have not yet been completed. Additionally, any quantifiable impact would apply to both the National LEV and OTC State Section 177 Programs and would not alter any equivalency determination.

[11] Start date assumptions for EPA's modeling are MY1999 for the National LEV program in the OTR, MY2001 for the National LEV program nationwide, MY1996 for Section 177 Programs in New York and Massachusetts, MY1998 for a Section 177 Program in Connecticut, and MY1999 for Section 177 Programs in Rhode Island, New Jersey, and Vermont. The dates for state Section 177 Programs reflect the effective dates for current state Section 177 Programs. Maine has taken steps to adopt a Section 177 Program. EPA has included Maine with the other six OTC States that have adopted a Section 177 Program, and has given Maine's program a start date of MY2001, recognizing that even though Maine has not yet completed all the steps to make its program go into effect, it has finished most of the actions and is expected to complete its adoption actions in the near future.

[12] Under the National LEV program duration requirements (see section V.A) the OTC States are only committed to have the Naitonal LEV program as a compliance alternative to a Section 177 Program until MY2006.

date for EPA action on the Tier 2 program (which has been incorporated into the modeling assumption for the National LEV case) in conjunction with lead time for manufacturers to prepare to comply with Tier 2 standards. The MY2005 start date for Tier 2 also represents a reasonable midpoint, for modeling purposes, between the MY2004 and MY2006 deadlines included in the MOUs. EPA is not precluded by the National LEV program from implementing a Tier 2 program in MY2004 if it determines Tier 2 standards should apply in that model year.

EPA's modeling shows that National LEV would achieve greater emission reductions in the OTR than individual OTC State Section 177 Programs. EPA's conclusion would not change even if all OTC States were to adopt Section 177 Programs. The emission levels are listed in the Table 1 below. The modeling is based on National LEV starting in MY1999 in the OTR and MY2001 in the rest of the country, with Federal Tier 1 vehicles making up the federal non-NLEV fleet. EPA did not include existing OTC State zero emission vehicle (ZEV) sales mandates in either of its modeling runs since these mandates are not affected by the National LEV rule. ZEV sales mandates would thus have similar effects on emission levels in both modeling cases and would not affect the relative emissions benefits of National LEV compared to those of OTC State Section 177 Programs.

All other assumptions used in the modeling included in the Final Framework Rule, the SNPRM, and today's rule remain consistent with those used throughout the National LEV process. EPA believes it is important to keep consistent assumptions to provide a comparison between benefits from the National LEV program and state Section 177 Programs in the OTR.

TABLE 1.—OZONE SEASON WEEKDAY EMISSIONS FOR HIGHWAY VEHICLES IN THE OTR (TONS/DAY)

Year	Pollutant	OTC State CAL LEV	National LEV
2005	NMOG	1,573	1,499
	NO_X	2,526	2,403
2007	NMOG	1,480	1,366
	NO_X	2,427	2,226
2015	NMOG	1,386	1,148
	NO_X	2,367	1,899

V. OTC State Commitments

This section describes the substance of the OTC States' commitments to National LEV. It also addresses the process (including timing) by which OTC States and auto manufacturers would commit to National LEV and by which EPA would find the program in effect.

A. Duration of OTC State Commitments and of the National LEV Program

Today's Final Rule takes a different approach to the duration of the OTC State commitments than was proposed in the SNPRM. As discussed in the SNPRM, the MOUs initialed by the OTC States and the auto manufacturers both had the duration of the National LEV program (and hence the duration of both the OTC States' and the auto manufacturers' commitments) depend on whether, by January 1, 2001, EPA issued mandatory new motor vehicle standards (''Tier 2 standards'') that were at least as stringent as National LEV and that would go into effect no later than MY2006. If EPA issued the specified standards by that time, the auto manufacturers would stay in National LEV until the Tier 2 standards became effective, and the OTC States would not enforce their own state Section 177 Programs until MY2006. If EPA did not issue the specified regulations by that time, then National LEV would end with MY2003 and, starting in MY2004, in any state where California or OTC LEV standards were not in place, the applicable standards for manufacturers would revert back to the federal Tier 1 standards. Although EPA rejected the MOU approach in the Final Framework Rule, EPA has reconsidered the issue based on the comments submitted by the OTC States and the auto manufacturers, and has decided to adopt the approach agreed upon by the OTC States and the auto manufacturers. Thus, under 40 CFR 1701(c) and 1705(e) and (g) of today's rule, the commitments of the OTC States and the auto manufacturers to National LEV last until MY2006, unless EPA fails to promulgate Tier 2 standards at least as stringent as National LEV on or before December 15, 2000, in which case the commitments last until MY2004.[13]

EPA had proposed in the SNPRM that the OTC States would commit to the National LEV program until MY2006. This meant that the OTC States would have committed to accept manufacturers' compliance with National LEV (or equally or more stringent mandatory federal standards) as an alternative to compliance with a state Section 177 Program through MY2005. The length of the auto manufacturers' commitment was set in the Final Framework Rule. Under that rule, manufacturers that opted into the program would be bound to comply with National LEV until the first model year for which manufacturers would be subject to a mandatory federal tailpipe emissions program at least as stringent as the National LEV program with respect to NMOG, NO_X and carbon monoxide (CO) exhaust emissions (''Tier 2 standards''). Under section 202(b)(1)(C) of the Clean Air Act, EPA could not mandate such standards prior to MY2004. Thus, the manufacturers' commitment to National LEV was to last at least until MY2004 and could last longer.

In the Final Framework Rule, EPA did not accept the MOU provisions for setting the duration of the National LEV program. EPA rejected the MOU provisions because it was concerned about setting up a program that would have the country take a step backward environmentally if the Agency failed to act by a specified deadline. EPA has reconsidered its views.

The main reason for changing the program duration is the comments received from the OTC States and the auto industry. The auto industry made it clear that stability until MY2006 is very important, and the OTC States were clear that they were uncomfortable with committing to allow National LEV as a compliance alternative until MY2006 if EPA were not to issue Tier 2 standards by January 1, 2001. The OTC States' primary reason for wanting to tie the duration of the program to promulgation of Tier 2 standards is that they need to know sooner rather than later how the Tier 2 standards and the California LEV program compare so that they can determine whether they will need to have an enforceable California LEV program to meet their air quality goals. EPA believes that an orderly air quality planning process is important and believes that the OTC States are in the best position to know what would be most useful to them in that process. EPA has decided to defer to the OTC States' judgment on this matter.

Having decided that the length of the OTC States' commitment should depend on whether EPA issues Tier 2 standards, EPA believes it would be unfair not to have the manufacturers' commitment also depend on whether EPA issues Tier 2 standards. First, that is the agreement that was reached by the OTC States and the manufacturers. It would be unfair to hold the manufacturers in for longer than they had agreed to in the MOU

[13] If EPA promulgates Tier 2 standards at least as stringent as National LEV on or before December 15, 2000, and those standards are in effect in MY2004 or MY2005, the manufacturers will become subject to those standards upon their effective date, but the OTC States' commitments to National LEV will not end until MY2006.

while giving the OTC States the benefit of the agreement. Second, an unintended consequence of EPA's decision not to tie the end of National LEV to EPA's issuance of the Tier 2 regulations is that several groups interpreted that as a signal that EPA was not intending to perform its statutory duty under CAA section 202(i)(3) to evaluate the need for, technological feasibility of, and cost effectiveness of new standards, and to issue new standards if warranted. EPA has every intention of meeting its statutory obligations under the CAA and does not want to send a contrary message. Third, EPA now believes that if National LEV comes into effect and manufacturers change all their manufacturing facilities over to build LEV technology, it is highly unlikely that they would actually change the technology back to Tier 1. A combination of the cost of changing back to old technology and adverse publicity from selling ''dirty'' cars probably should be sufficient incentive to keep manufacturers using LEV technology. One manufacturer's decision, announced this summer, to sell LEV technology (albeit certified at Tier 1 levels) nationally and various marketing campaigns touting clean cars are evidence that ''clean'' cars can be used as a selling point. Thus, today's Final Rule modifies the duration of the manufacturers' commitment to National LEV.

B. Timing of OTC State Commitments, Manufacturer Opt-Ins, and EPA Finding That National LEV Is in Effect

EPA is establishing a process and deadlines for the OTC States and the manufacturers to opt into the National LEV program and for EPA to find the program in effect. The process and timing are unchanged from EPA's proposal in the SNPRM. Because National LEV needs to be in place as soon as possible to ensure that it is available for MY1999, 40 CFR 86.1706 sets the following deadlines based on the date of signature of this Final Rule.[14] Seventy-five days from signature of this FRM, EPA must determine whether the National LEV program is in effect (see section V.C.3 below for the criteria for finding National LEV in effect). This finding will be based on the OTC States' initial opt-in packages from their Governors and state environmental commissioners or secretaries (discussed below in section V.C) that were submitted no later than 45 days from the date of signature of this rule and on the manufacturers' opt-ins submitted no later than 60 days from signature of this rule.[15] If EPA finds National LEV in effect, all parties are bound by their commitments to the program. While any party that misses its deadline for opt-in is not barred from submitting a late opt-in, EPA is only required to consider timely opt-ins in determining whether National LEV is in effect. Moreover, given the very short timeframe for the opt-in process and the fact that some parties may be reluctant to opt in before they know whether others will do so, a late opt-in is likely to jeopardize the start-up of the program.

As proposed, after the initial opt-ins and an EPA finding that the program is in effect, the OTC States will generally have one year from the date of the in-effect finding to submit the final portion of their opt-ins, which is a SIP revision committing the state to the National LEV program and allowing manufacturers to comply with National LEV as an alternative to a state Section 177 Program, as described in more detail in section V.C.4 below. For a few states, specifically Delaware, New Hampshire, Virginia and the District of Columbia, the deadline is eighteen months, rather than one year, from the date of the in-effect finding. These states have particular circumstances related to their state rulemaking processes that make a one-year deadline unrealistic. If a state were to miss its deadline for submission of its SIP revision committing to National LEV, the manufacturers would have the opportunity to opt out of the program, as discussed further in section VI.

C. OTC State Commitments, Manufacturer Opt-Ins, and EPA Finding That National LEV Is in Effect

This section describes the process for the OTC States and the manufacturers to commit to the National LEV program and for EPA to find the program in effect. This includes how the OTC States will commit to the program, the elements of their commitments, the permissible conditions on OTC State and manufacturer opt-ins, and the criteria that EPA will use to find the program in effect.

1. Initial Opt-In by OTC States

As proposed, the OTC States will commit to National LEV in two steps, the first of which is an opt-in package from each state's Governor and environmental commissioner, indicating the OTC State's intent to opt into National LEV. The second step is a SIP revision incorporating the OTC States' commitment to National LEV in state regulations, which EPA will approve into the federally-enforceable SIP.

To opt into National LEV, within 45 days of signature of this rule, the Governor (or Mayor, in the District of Columbia) will submit to EPA an executive order or a letter committing the OTC State to the National LEV program. As specified in 40 CFR 86.1705(e), the executive order or letter will contain three main elements. First, it will state that its purpose is to opt the state into National LEV. Second, it will state that the Governor is forwarding a letter signed by the head of the state environmental agency (or other appropriate agency or department), which specifies the details of the state's commitment to the National LEV program. Third, it will state that the Governor has directed the head of the state environmental agency to take the necessary steps to adopt regulations and submit a SIP revision committing the state to National LEV in accordance with the requirements of the National LEV regulations. In addition, OTC States with existing ZEV mandates[16] may add language confirming that the opt-in will not affect the state's requirements pertaining to ZEVs.

The Governor's executive order or letter will enclose a letter signed by the state environmental commissioner or secretary of the appropriate state department (''commissioner's letter''), which specifies the details of the state's commitment to National LEV. Alternatively, if an OTC State has proposed regulations meeting the requirements for a SIP revision specified below, the state may substitute the proposed regulations for the portions of the commissioner's letter for which they are duplicative. In that case, the Governor will send to EPA the Governor's executive order or letter, the proposed regulations, and a letter from the commissioner, which will contain the elements specified below that were not included in the proposed regulations.

As proposed, the commissioner's letter will include the following elements. First, it will indicate that National LEV would achieve reductions of VOC and NO_x emissions equivalent to or greater than the reductions that

[14] EPA will provide directly affected parties actual notice and make copies of the FRM available within a week of signature. Upon request, copies of the FRM will also be made available to other parties in the same timeframe.

[15] If one of these deadlines would otherwise fall on a weekend or federal holiday, the FRM sets the deadline as the next business day.

[16] ZEV mandates are those state regulations or other laws that impose (or purport to impose) obligations on auto manufacturers to produce or sell a certain number or percentage of ZEVs. Any OTC State with a ZEV mandate that was adopted prior to the signature date of this rule is considered a state with an existing ZEV mandate.

would be achieved through state adopted Section 177 Programs in the OTR. Second, it will indicate that the state intends National LEV to be the state's new motor vehicle emissions control program. Third, it will state that for the duration of the state's participation in National LEV, the state will accept National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to any state Section 177 Program. As EPA is defining it here, a state Section 177 Program is any regulation or other law, except a ZEV mandate, adopted by an OTC State in accordance with section 177 and which is applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these vehicle categories are defined under the California regulations. (This commitment would not restrict states from adopting and implementing requirements under section 177 for heavy-duty trucks and engines and diesel-powered vehicles between 6,001 and 14,000 pounds GVWR.) The letter will further state that the state's participation in National LEV extends until MY2006, except as provided in the National LEV regulations' provisions addressing the duration of the OTC State commitments and state offramps. However, in a change from the proposal (discussed in section V.A above), the letter will add that if no later than December 15, 2000, EPA does not issue mandatory new motor vehicle standards (''Tier 2 standards'') at least as stringent as National LEV and that would go into effect no later than MY2006, then the state's participation in National LEV extends only until MY2004, except as provided in the National LEV provisions for state offramps. The offramps allow the OTC States to exit National LEV if an auto manufacturer were to decide to exit the program. OTC States without existing ZEV mandates would add a statement that the state accepts National LEV as a compliance alternative to any ZEV mandates. OTC States with existing ZEV mandates would add a statement that their acceptance of National LEV as a compliance alternative for state Section 177 Programs does not include or have any effect on the OTC State's ZEV mandates.

Fourth, the commissioner's letter will include both an explicit recognition that the manufacturers are opting into National LEV in reliance on the OTC States' opt-ins, and a recognition that the commitments in the initial OTC State opt-in package have not yet gone through the state rulemaking process to be incorporated into state regulations, so they do not yet have the force of law; in addition, the letter will recognize that the state's executive branch must comply with any laws passed by the state legislature that might affect the state's commitment. The manufacturers' comments opposed inclusion of the proposed language stating that the provisions of the state's letter would not have the force of law until adopted as state regulations and that the state must comply with any state legislation that might affect the commitment. The manufacturers expressed concern that these provisions undermine the states' commitments. However, a number of states have indicated to EPA that they could not make a commitment of this nature before completing the states' rulemaking processes, unless they included language to clarify the legal nature of the initial state commitment. In light of the fact that the states will not have sufficient time to complete a rulemaking before opting into National LEV, EPA believes it is appropriate for the opt-in provisions to allow the states to include the language that EPA proposed. EPA does not believe this language will in any way affect the degree to which the states are legally or politically bound by their initial opt-ins.

Fifth, the commissioner's letter will include an acknowledgment that, if a manufacturer were to opt out of National LEV pursuant to the opt-out provisions in the National LEV regulations, the transition from the National LEV requirements to any state Section 177 Program or ZEV mandate would be governed by the National LEV regulations. Sixth, similar to the manufacturers' opt-in letters, the commissioner's letter will state that the state supports the legitimacy of the National LEV program and EPA's authority to promulgate the National LEV regulations.

The OTC States have indicated that they support certain commitments regarding ZEV mandates by including those provisions in the MOU voted on by the OTC and initialed by the OTC pursuant to the vote. Consistent with the provisions in the MOU initialled by the OTC, for states without existing ZEV mandates, the commissioner's letter will state that the state intends to forbear from adopting a ZEV mandate effective during the period of the state's participation in National LEV. In this rule, EPA is defining an existing ZEV mandate as a ZEV mandate adopted by an OTC State prior to the signature date of this rule. The manufacturers commented that the states should commit that they *will* forbear from adopting ZEV mandates, rather than only stating their *intent* to forbear from such action. However, the OTC States have expressed their concern about attempting to bind future legislatures in this way and have consistently indicated that such language would not be acceptable to them. As it stated in the NPRM (60 FR 52740) and SNPRM (62 FR 44760) for National LEV, EPA believes that the decision regarding adoption of ZEV mandates by OTC States must be left up to each individual OTC State, to the extent permitted under section 177. Thus, EPA believes it is appropriate to include the language supported by the OTC States here. If any OTC State would prefer to commit that it *will* forbear from adopting a ZEV mandate, it may make that commitment in its opt-in.

The commissioner's letter from OTC States that have not adopted a Section 177 Program at the time of signature of this rule need not include a commitment or statement of intent to forbear from adopting a Section 177 Program effective during the period of the state's commitment to National LEV, as long as the state commits to accept National LEV as a compliance alternative to any such program. EPA took comment on such a provision in the SNPRM (60 FR 44760) because the draft MOU initialed by the manufacturers included a statement that certain OTC States would forbear from adopting such ''backstop'' Section 177 Programs,[17] while the draft MOU initialed by the OTC States did not include any statement regarding adoption of such backstop programs. The comments on the SNPRM from the manufacturers and the OTC States reiterate these positions. In particular, the manufacturers stated that allowing all OTC States to adopt backstop Section 177 Programs would destabilize the National LEV program. The manufacturers are concerned that the prospect of a return to Tier 1 vehicles in at least some OTC States if a state violates its commitment to National LEV is a powerful incentive for states to abide by their commitments that would be lost with widespread backstops. EPA agrees that the absence of backstops in some OTC States would contribute to program stability in the manner that the manufacturers suggest. However, EPA does not believe it is necessary to bar states from adopting backstops to provide this source of stability, as it is highly unlikely that all or nearly all OTC States will adopt backstop Section

[17] ''Backstop'' Section 177 Programs are programs that allow National LEV as a compliance alternative to the Section 177 Program requirements.

177 Programs effective during the relevant time period and it is unlikely that more than a few (if any) states outside the OTR would adopt backstop programs. In addition, the OTC States said that they are unwilling to commit not to adopt backstop programs. Thus, EPA does not believe it is appropriate to include a provision committing not to adopt a backstop Section 177 Program as an element of the OTC States' commitments to National LEV.

Finally, the commissioner's letter may include a statement that the state's opt-in to National LEV is conditioned on all of the motor vehicle manufacturers listed in the National LEV regulations opting into National LEV pursuant to the National LEV regulations and on EPA finding National LEV to be in effect. However, as with the manufacturers' opt-ins, no conditions other than those specified in the regulations may be placed on any of the state opt-in instruments (the Governor's executive order or letter, the commissioner's letter, or the SIP revision).

The OTC States commented that the regulations should allow an OTC State to condition its opt-in on signature of an acceptable independent agreement with the manufacturers to promote advanced technology vehicles (ATVs). An agreement on ATVs has not been contemplated to be part of the National LEV regulations, but has been discussed as a separate agreement between the OTC States and the auto manufacturers. At one point, the OTC States and manufacturers reached consensus on the substance and language of an ATV agreement, which was to establish mechanisms for sharing information not only about advanced technology vehicles and alternative fuels, but also about the incentives and infrastructure development necessary to make new technology feasible. This agreement was attached to the MOUs initialed by the manufacturers' organizations and the OTC. EPA supports this agreement, but does not believe that opt-ins to National LEV need be conditioned on final signature of the agreement. If the OTC States and manufacturers want to finalize the agreement (contingent on National LEV coming into effect), they can and should do so before the due date for the OTC State opt-ins. There is no reason to delay finalizing the ATV agreement until after the OTC States have opted in. Thus, although OTC States can refuse to opt in if there is no ATV agreement, they cannot send in an opt-in which is conditioned on an ATV agreement being signed.

In the regulations at 40 CFR 86.1705 (e) and (g), EPA is providing specific language for each element of the OTC States' opt-ins to be included in the Governor's executive order or letter, the commissioner's letter, and the SIP revision. Although it is somewhat unusual for EPA to identify specific language for state submissions, EPA believes that this is an appropriate situation to do so. Because the OTC States and manufacturers are signing up for a voluntary program and are unlikely to sign an MOU, using specified language will ensure that they sign up to the same program. Otherwise, the opt-ins might not represent agreement on the terms and conditions of the voluntary National LEV program. However, in a slight modification to the proposed approach, the final regulations provide that for the Governors' and commissioners' letters, a state may opt into National LEV using the specified language or ''substantively identical language.'' Because the first step of the OTC States' commitments to National LEV will occur before the states can complete their rulemaking processes, EPA recognizes that some slight wording variations may be necessary for individual states. For the subsequent SIP revisions, however, states will have the opportunity to go through notice-and-comment rulemaking on the specified language. Moreover, because the deadline for manufacturers to opt into National LEV is after the deadline for the OTC States, the manufacturers will have the opportunity to assess the adequacy of any state opt-ins that vary from the specified language. If the variation is sufficient to undercut the assurance that the state will carry out its commitment to National LEV, the manufacturers may decide not to opt into National LEV. However, the manufacturers would not have an opportunity to assess beforehand any variations in the SIP revision language submitted by the states. Prior to opt-in, the manufacturers can evaluate the SIP revision language specified in the regulations to determine whether they view the language as an adequate expression of the states' commitments to National LEV, but they would not have the opportunity to evaluate any variations on that specified language. The importance of ensuring that all parties know what they are signing up to at the time of opt-in further supports the requirement for states to use exact language for the SIP revisions.

Despite the possibility that states may opt into National LEV even with slight non-substantive variations in the language of the Governor's letter or commissioner's letter, EPA emphasizes that any differences must be *minor* and *non-substantive.* Because the Governor's letter and commissioner's letter are political as well as legal documents, even language without direct legal effect is important to bind the state politically to carry out its commitment. Hence, EPA and/or the manufacturers are likely to view variations in such language as substantive changes to the state's commitment. To avoid invalid opt-ins, EPA expects most, if not all, OTC States to use the specified language unmodified. Only a few OTC States commented that they might need to make unspecified changes in the language. In addition, as discussed further below, EPA will find National LEV in effect without providing for additional notice-and-comment on whether the conditions are met for finding National LEV in effect. EPA may proceed without additional rulemaking or other process if the Agency's in-effect finding is essentially a nondiscretionary action based on clear factual determinations. If EPA must use its discretion to determine whether a state has adequately committed to National LEV, that might require further rulemaking and substantially delay implementation of the program. However, if the OTC States use the language specified in the regulations, which EPA has determined to be adequate through a notice-and-comment rulemaking, EPA will be able to find National LEV in effect on that basis.

EPA also recognizes that a state may wish to include background information, especially in the Governor's executive order or letter. This is permissible under today's regulations, providing that the additional information does not add conditions to the state's opt-in.

2. Manufacturer Opt-Ins

As proposed, the motor vehicle manufacturers' opt-ins to National LEV are due within 60 days from signature of this Final Rule. As provided in the Final Framework Rule, a manufacturer will opt into National LEV by submitting a written notification signed by the Vice President for Environmental Affairs (or a company official of at least equivalent authority who is authorized to bind the company to the National LEV program) that unambiguously and unconditionally states that the manufacturer is opting into the program, subject only to conditions expressly contemplated by the regulations. See 40 CFR 86.1705(c)(2). The only permissible conditions on a manufacturer's opt-in notification would be that the OTC States or the auto manufacturers specified by the manufacturer opt into National LEV pursuant to the National

LEV regulations and that EPA find the program to be in effect. These conditions parallel the permissible conditions described above for the OTC States' opt-ins.

One commenter voiced a concern that the opt-in language that would commit the manufacturers ''not to seek to certify any vehicle except in compliance with the regulations in subpart R'' would prevent manufacturers from certifying heavy-duty vehicles. The statement would not have that effect. Heavy-duty vehicles are not covered by the National LEV program, so they would not need to be (and could not be) certified under the National LEV regulations. Similarly, this opt-in language would not preclude manufacturers from seeking to certify a vehicle for sale only in California and states that have the California program in effect. The opt-in language also would not commit manufacturers to obtain National LEV certificates for vehicles sold outside the United States.

3. EPA Finding That National LEV Is In Effect

The OTC States' and the auto manufacturers' opt-ins will become effective upon EPA's receipt of the opt-in notification or, if the opt-in is conditioned, upon the satisfaction of that condition. As provided in 40 CFR 86.1706, EPA will find National LEV in effect if each of the listed manufacturers submits an opt-in notification that complies with the requirements for opt-ins, each of the opt-in notifications submitted by an OTC State complies with the requirements for opt-ins, and any conditions placed upon any of the opt-ins are satisfied. Thus, if all the parties that opted into National LEV agree to participate in the program, even if fewer than all OTC States opt into National LEV, EPA will find the program in effect. EPA believes that National LEV should be a national program—effective in all states but California. This would provide the OTR with emissions reductions greater than what could be achieved without National LEV and would simplify distribution and other aspects of the sale of motor vehicles. Moreover, the manufacturers have stated that they are not willing to opt into National LEV unless each and every OTC State opts into National LEV. However, if the OTC States and auto manufacturers are willing to participate in a National LEV program even if all OTC States do not opt in, EPA will not stand in the way of National LEV going into effect. By allowing each of the parties in National LEV to condition their agreement to opt in on specified other parties opting in, EPA is leaving it up to each of the parties to decide what is an acceptable basis for its own participation. EPA expects that each motor vehicle manufacturer and each OTC State will carefully evaluate the National LEV program as a whole and make the choice as to whether and under what conditions it chooses to participate.

Once all conditions on opt-ins are satisfied, the manufacturers will be subject to the National LEV requirements for new motor vehicles for the duration of the program, and the OTC States that opt in will be committed to participate in the National LEV program for the duration of their commitments, as discussed above in section V.A.

While the OTC States' SIP revisions are a necessary component of their commitments to National LEV, EPA will make the finding as to whether National LEV is in effect and National LEV will begin before the OTC States' SIP revisions are due. Through an executive order or letter, the Governor of each state will have opted into National LEV and started the process for submission of an approvable SIP revision. Also, as discussed further below, an OTC State's failure to submit the SIP revision within the time provided for submission would give manufacturers an opportunity to opt out of the National LEV program. *See* Sec. VI.A.2; 40 CFR 86.1707(f). Together, this high level directive for action and the consequences of a failure to conclude the action provide substantial assurance that the OTC States will submit their SIP revisions within the specified time.

EPA will publish the finding that National LEV is in effect in the **Federal Register**, but the Agency will not go through additional rulemaking to make this determination. In the Final Framework Rule, EPA stated that further Agency rulemaking to find National LEV in effect would be unnecessary because EPA would establish the criteria for the finding through notice-and-comment rulemaking, and EPA's finding that the criteria are satisfied would be an easily verified objective determination. See 62 FR 31226 (June 6, 1997). The public has had full opportunity to comment on the adequacy of the elements of the manufacturers' and OTC States' opt-ins. Thus, EPA will find that National LEV is in effect without conducting further rulemaking if the Agency determines that each of the listed manufacturers has submitted an opt-in notification that includes the specified elements in approved language without qualifications, each of the opt-in notifications submitted by an OTC State includes the specified elements in specified or substantively identical language without qualifications, and any conditions placed upon any of the opt-ins have been satisfied.

4. SIP Revisions

Within one year (eighteen months for a few specified states, as discussed above in section V.B) of the date set for EPA's finding that National LEV is in effect, the OTC States will complete the second phase of their commitments to National LEV by submitting SIP revisions to EPA incorporating their commitments (''National LEV SIP revisions''). As proposed and specified in 40 CFR 86.1705(g), the SIP revisions will contain the following elements incorporated in enforceable state regulations.

The first regulatory provision will commit that, for the duration of the state's commitment to National LEV, the manufacturers may comply with National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to any state Section 177 Program (which is any regulation or other law, except a ZEV mandate, adopted by an OTC State in accordance with section 177 and which is applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these vehicle categories are defined under the California regulations).[18] This provision would not restrict states from adopting and implementing requirements under section 177 for heavy-duty trucks and engines and diesel-powered vehicles between 6,001 and 14,000 pounds GVWR. The regulations will also commit the state to participate in National LEV until MY2006, except as provided in the National LEV regulatory provisions for the duration of the OTC State commitments, including provisions for state offramps. However, as discussed in section V.A above, the regulations will also provide that if, no later than December 15, 2000, EPA has not issued mandatory new motor vehicle standards (''Tier 2 standards'') at least as stringent as National LEV that would go into effect no later than MY2006, then the state is committed to participate in National LEV only until MY2004, except as provided in the National LEV provisions for state offramps. States that do not have an existing ZEV mandate (see n. 16 above)

[18] OTC States that had Section 177 Programs at the time of opt-in would need to modify their existing regulations in accordance with this provision.

will additionally provide that manufacturers may comply with National LEV as a compliance alternative to any ZEV mandates for the duration of the state's commitment to National LEV.

The second element of the state regulations will explicitly acknowledge that, if a manufacturer were to opt out of National LEV pursuant to the opt-out provisions in the National LEV regulations, the transition from the National LEV requirements to any state Section 177 Program or ZEV mandate (for states without existing ZEV mandates) would be governed by the National LEV regulations, thereby incorporating these National LEV provisions by reference into state law.

The SIP submission to EPA will include state regulations containing the elements discussed above, and a transmittal letter or similar document from the state commissioner forwarding those regulations. As proposed, four additional elements of the SIP commitment must be included either in the transmittal letter or the state regulations. First, the state will commit to support National LEV as an acceptable alternative to state Section 177 Programs for the duration of the state's commitment to National LEV. Second, the state would recognize that its commitment to National LEV is necessary to ensure that National LEV remain in effect. Third, the state will state that it is submitting the SIP revision to EPA in accordance with the National LEV regulations. Fourth, each OTC State without an existing ZEV mandate (see n. 16 above) will state that, for the duration of the state's commitment to National LEV, the state intends to forbear from adopting a ZEV mandate effective during the period of the state's participation in National LEV. See section V.C.1 above for further discussion of OTC State commitments relating to ZEV mandates. As discussed in section V.C.1 above, OTC States that had not adopted a Section 177 Program at the time of signature of this rule would not need to commit not to adopt backstop Section 177 Programs.

EPA will be able to find that an OTC States' SIP submission meets the National LEV SIP requirements and to approve it into the SIP without further rulemaking as long as the submission both includes the language specified in the regulations without additional conditions and meets the CAA requirements for approvable SIP submissions. In the SNPRM, EPA provided full opportunity for public comment on the language that the states would use in their SIP revisions. Today's rule finalizes that language with a few modifications arising from the public comments. Thus, in reviewing such a SIP submittal, EPA will only have to determine whether the submittal includes the specified language without additional conditions, and whether it meets the statutory criteria for approvable SIP submissions, as laid out in sections 110(a)(2) and 110(l) of the CAA. Section 110(a)(2), in relevant part, specifies that the state must have provided public notice and a hearing on the SIP provisions and the submission must provide necessary assurances that the state will have adequate personnel, funding and authority under state law to carry out the provisions. Section 110(l) (discussed in more detail below) provides that SIP revisions must not interfere with attainment or any other applicable requirement.

In this case, these requirements for EPA's approval are easily verified objective criteria. They leave EPA little discretion in deciding whether a state submission meets the requirements for a National LEV SIP revision, and consequently remove any benefits to be derived from conducting notice-and-comment rulemaking on each approval. Determining whether the language of the SIP submittal tracks the language provided in the final regulations and whether the state has substantively qualified or conditioned that language through modifications or additions is a straightforward, essentially ministerial task. This is also true for assessing whether the state has provided notice and a public hearing on the SIP submission. Because National LEV is a federal program, the state needs no personnel or funding to carry it out, so there is nothing related to the requirement for adequate personnel and funding for EPA to evaluate. For a state with existing regulations requiring compliance with a state Section 177 Program, EPA will merely have to determine whether the state has modified its regulations to include the language in the National LEV regulations to accept National LEV as a compliance alternative for the specified duration of the state commitment, as well as the additional provisions specified above. Again, this is a very simple, objective assessment. Finally, EPA has determined that National LEV would provide reductions in the OTR equivalent to or greater than OTC State Section 177 Programs in the OTR (see section IV), so that an OTC State commitment to National LEV would not interfere with attainment or any other Act requirement. See below for further discussion of this point.

Incorporating the OTC States' commitments to National LEV in state regulations approved into the SIPs will substantially enhance the stability of the National LEV program and support giving states credit for SIP purposes for emissions reductions from National LEV. A SIP revision would clearly indicate a state's commitment to National LEV and would reiterate the state executive branch's support for the National LEV program. More importantly, an approved SIP revision is federal law and hence has binding legal effect. *General Motors Corp.* v. *U.S.*, 496 U.S. 530, 540 (1990).

In the SNPRM, EPA explained the circumstances under which EPA believes these SIP commitments would have binding effect. Several commenters disagreed with EPA's legal interpretations. Of course, whether a subsequent state law or regulation could be approved into the SIP or whether it would be preempted by the earlier National LEV SIP revision would be a fact-specific determination that could not be made unless and until a state took final action arguably in conflict with its National LEV SIP revision. Although this is an issue that might never arise, EPA believes it is appropriate to lay out the key legal principles that EPA believes would apply in such circumstances so that any OTC State that submits a National LEV SIP revision does so with a full understanding of how its commitment to National LEV would be enforceable.

A National LEV SIP revision would provide that the state commits to accept National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to a state program under section 177 for a specified time period. EPA approves SIP submissions through a federal notice-and-comment rulemaking process under section 110(k) of the Act. Approved SIP submissions are incorporated by reference into the CFR and are enforceable federal law. If a state adopted new state law or regulations that violated this commitment in the SIP (e.g., by requiring compliance only with a state Section 177 Program), this new state law would conflict with the federally-approved National LEV SIP revision and would not be valid prior to EPA approval into the SIP of the new law. Prior to such action, the new state law would be precluded by the federal law with which it conflicted (i.e., the SIP revision EPA had approved). The courts have held that where Congress has the power under the Supremacy Clause of the U.S. Constitution to preempt an area of state law (which it has with respect to air pollution controls), state law is preempted if either Congress evidences an intent to occupy a given field, or to the extent that the state law actually conflicts with federal law. Hence, the later state regulation that did not allow National LEV as a compliance alternative would be preempted by the federally-approved National LEV SIP provision and would be unenforceable against the manufacturers. Manufacturers could bring suit against the state to clarify that the new state law was not enforceable until approved by EPA, thereby enforcing the initial SIP commitment in federal court.

To revise the SIP, the state would have to submit the new provisions and EPA would have to approve them into the SIP through notice-and-comment rulemaking. If EPA approved the new provisions, they would take effect. If EPA disapproved the new provisions, then the new state law would continue to conflict with the federally-approved SIP revision (which is federal law) containing the state commitment to National LEV, and manufacturers could seek a judicial determination that the federally-approved National LEV SIP revision commitment preempted the new state law.

Once a state has an approved SIP provision committing to accept National LEV as a compliance alternative for a specified duration, under section 110(l) of the CAA, EPA would be obligated to disapprove a subsequent SIP revision that violated the state's commitment if EPA were to find that the SIP revision would interfere with other states' ability to attain or maintain the national ambient air quality standards (NAAQS). Specifically, section 110(l) provides that EPA must disapprove a plan revision if it ''interfere[s] with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act.'' By the terms of its rulemaking, National LEV comes into and stays in effect only if all relevant states commit to allow it as a compliance alternative. If National LEV comes into effect, a number of OTC States, as well as states outside the OTR, are likely to rely on National LEV as a means of attaining and maintaining the ozone NAAQS. These states are likely to forego adoption of other control measures because they will count on reductions from National LEV to meet their attainment and maintenance obligations. In this manner, other states will be relying on each of the OTC States keeping its commitment to National LEV. An OTC State breaking its commitment to allow National LEV as a compliance alternative could lead to the dissolution of the National LEV program, which in turn would likely deprive other states of the emission reductions from National LEV, and could thereby interfere with those other states' ability to attain. As discussed above, in the SIP revisions committing to National LEV, each OTC State would explicitly recognize that the state's commitment to National LEV is necessary to ensure that the program remain in effect.

One commenter opposed EPA's reading of section 110 on several grounds, focusing in particular on the potential effects on states downwind from the violating state. The commenter objects to anything that would discourage a state that committed to National LEV from implementing a Section 177 Program if that state finds in the future that National LEV will not prevent emissions within that state from interfering with attainment in downwind states. The commenter claims that the commitment to National LEV would violate the section 110(a)(2)(D) requirement that emissions in a state cannot interfere with attainment or maintenance in downwind states.

EPA rejects the suggestion that a state's commitment to National LEV has the potential to interfere with that state's ability to comply with section 110(a)(2)(D). Section 110(a)(2)(D) requires SIPs to ''contain adequate provisions prohibiting * * * any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will * * * contribute significantly to nonattainment in, or interfere with maintenance by, any other state. * * *'' Thus, section 110(a)(2)(D) holds a state responsible for reducing a given quantity of emissions that contributes significantly to nonattainment in another state. It does not mandate any particular measure for reducing those emissions, and the Circuit Court of Appeals for the District of Columbia, in *Virginia* v. *EPA*, 108 F. 3d 1397 (D.C. Cir. 1997), precluded EPA from requiring states to adopt a program under section 177. States commonly make choices between emissions control measures, and the decision to adopt one measure often precludes another, usually due to practical constraints such as incompatible technology, limited resources, lead time requirements, etc. The choice of National LEV is no different. In selecting National LEV as a means of controlling emissions from new motor vehicles, a state will be fully aware that the choice requires giving up the ability to adopt a state Section 177 Program for a given period of time, except under specified circumstances. EPA has determined that National LEV produces equivalent or greater emissions reductions than OTC State-by-State adoption of Section 177 Programs. Thus, the only way in which adoption of OTC State Section 177 programs in lieu of National LEV could help meet OTC States' section 110(a)(2)(D) obligations is if California were to adopt more stringent CAL LEV requirements, all or almost all OTC States also adopted such standards, and the timing of the adoptions was such that the standards would become effective earlier than the date on which the OTC States' participation in National LEV would have ended had the states opted into National LEV instead. For National LEV to come into effect in MY1999, OTC States must evaluate the alternatives based on the information available at this time and make a choice now as to whether to opt into National LEV. As is often the case, if state regulators wait until they have perfect information about all possible options, one option—National LEV, which now looks to be the most attractive option—will no longer be available. Nor is it an option for OTC States to opt into National LEV without making an enforceable commitment for the specified duration. National LEV is a voluntary program for both states and manufacturers, and manufacturers are unwilling to supply National LEV vehicles without assurance that their future compliance obligations will remain stable for the specified duration. Therefore, a commitment by OTC States to accept compliance with National LEV for the specified duration is an integral and critical element of National LEV. Based on the options and information available now to OTC States and only the possibility that California will tighten its standards at some point in the future, an OTC State that made an enforceable commitment to National LEV for the specified duration could not be said to be interfering with attainment of downwind states, nor could that commitment be held unenforceable in the future. Of course, for most OTC States, National LEV is only one of the actions they will need to take to meet their CAA obligations. States committed to National LEV would remain responsible for compliance with section 110(a)(2)(D) and would be able to use other means to achieve the necessary reductions. Thus, the state commitments to National LEV in no way violate section 110(a)(2)(D), nor are they consequently unenforceable as the commenter suggests.

The commenter further asserts that EPA is attempting to prohibit states from adopting Section 177 Programs and this is illegal and contrary to section 177, which provides states the right to adopt state standards for new motor vehicles that are identical to California standards. EPA agrees that section 177 clearly provides states the right to adopt the California standards. Under National LEV, *states* make the choice whether to exercise that right and implement the California standards, or to commit to accept manufacturers' compliance with an alternative set of emissions controls on new motor vehicles for a limited period of time. The OTC States and the manufacturers developed the basic framework and requirements for the National LEV program and the fundamental agreement on which it is based. EPA does not have the authority to require the manufacturers to produce National LEV vehicles without their agreement or to require the OTC States to commit to National LEV. Absent the voluntary actions of the manufacturers and OTC States there will be no National LEV Program. However, if the manufacturers and OTC States choose to commit to National LEV and bring the program into being, it is in no way contrary to section 177 or any other provision of the Clean Air Act for EPA to enforce the agreement in the manner provided in today's rule.

The commenter further contends that EPA's reading of section 110(l) is incorrect for several reasons. As discussed above, under EPA's interpretation, section 110(l) could bar EPA from approving into the SIP a state submission that would revoke an earlier SIP provision committing a state to accept National LEV as a compliance alternative for a specified duration. First, the commenter states that based on the same analysis, EPA could use its authority under section 110(k)(5) to require even unwilling states to revise their SIPs to accept National LEV as a compliance alternative on the theory that failure to do so would frustrate National LEV and thus interfere with attainment in neighboring states. The commenter states that EPA has no such authority under section 110(k)(5), (*under Commonwealth of Virginia* v. *Environmental Protection Agency,* 108 F.3d 1397 (D.C. Cir. 1997).

EPA rejects the contention that the section 110(k)(5) analysis is comparable to EPA's interpretation of section 110(l). As emphasized above, National LEV is a voluntary program. Enforcing an agreement that states have voluntarily entered into is a fundamentally different action from mandating that states enter into an agreement. More specifically, EPA's interpretation of section 110(l) relies on the effect that a violation of a state commitment is likely to have on other states that have relied upon the National LEV program. A program will not be useful for state air pollution control and planning purposes unless there is some assurance that it will continue over time, and EPA has attempted to structure National LEV so as to provide such an assurance of stability. Given this structure, states will likely reasonably rely on achieving a certain quantity of emissions reductions from National LEV and hence will likely decide not to adopt other pollution control measures. Since most measures take time to adopt and implement, the sudden and unexpected loss of emissions reductions from National LEV would be likely to cause a significant delay in some states' emissions control efforts. As a consequence, it would affect such states' ability to meet the statutory and regulatory deadlines for attainment as well as the obligation to protect the health and welfare of their citizens. In contrast, if OTC States did not commit to National LEV and the program never came into effect, while the opportunity for emissions reductions from National LEV would be lost, states would never have expected to receive those reductions, would not have foregone opportunities for other types of emissions reductions, and would not be disadvantaged in their ability to pursue other measures. Under those circumstances, EPA would have no basis for finding that failure to include a commitment to National LEV would make a SIP substantially inadequate to attain the NAAQS or otherwise comply with any requirement of the CAA.

The commenter also cites section 110(a)(2)(D) to argue that section 110 holds each state responsible only for emissions within its jurisdiction and requires a state to take action only if those emissions are interfering with attainment in another state. EPA agrees that section 110(a)(2)(D) only applies to emissions activity within the state, but EPA is here relying on section 110(l), not section 110(a)(2)(D). Section 110(l) simply provides that EPA shall not approve a revision if it ''would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or *any* other applicable requirement of [the] Act.'' (Emphasis added.) Section 110(l) makes no reference to emissions activities within the state, and EPA declines to attempt to read in such a limitation.

The commenter states further that it would not violate section 110 for EPA to approve into a SIP state provisions that replace National LEV with a section 177 program when the section 177 program would result in equivalent or lower emissions within the state. If the manufacturers might choose to opt out of National LEV as a consequence of an EPA approval of such a revision, the revision would jeopardize all of the emissions reductions from the National LEV program and states without backstop programs could experience the significantly higher emissions that would be produced by Tier 1 vehicles. Thus, it is highly unlikely that the proposed SIP revision would not interfere with attainment in at least some states that had relied upon National LEV, even if emissions in the violating state remained stable or decreased and vehicles from the violating state that migrated into other states emitted at the same or lower levels. For these reasons, section 110(l) could require EPA to disapprove the state's proposed revision.

Finally, the commenter states that EPA could not find that a proposed SIP revision breaking the state's commitment to National LEV would interfere with attainment under section 110(l) because manufacturers would be allowed to sell Tier 1 vehicles in the violating state even if they do not opt out of National LEV. In that situation, approval of the section 177 program would reduce emissions in that state in comparison to the Tier 1 requirements that would otherwise apply. EPA disagrees with the commenter's analysis of how this situation would relate to the requirements of section 110(l). Given the likelihood that manufacturers would opt out of National LEV if EPA were to approve the SIP revision, approval of the SIP revision would be likely to result in overall higher emissions from Tier 1 requirements in many states, not just one, and a number of these states are likely to be relying on the reductions from National LEV. Moreover, the violating state has the ability to avoid some or all of the negative emissions effects of its action, either by not taking the action in the first place, or by curing its violation, as discussed above in section VI.A.1.[19] In contrast, other states cannot prevent a state from violating, but rather must rely on EPA's disapproval to retain the emissions reductions that they are relying on for

[19] If a state violated its commitment, it would have the ability to limit the period of time for which it would receive Tier 1 vehicles to approximately two full model years by curing the violation. Even if EPA were to approve the SIP revision, the state would receive Tier 1 vehicles for two years pursuant to the requirement for lead time under section 177. Thus, an EPA disapproval of a violating state's proposed SIP revision would not necessarily result in higher emissions in the violating state compared to the result if EPA had approved the proposed SIP revision.

attainment. Under these circumstances, the fact that the violating state had taken action that caused Tier 1 requirements to apply in that state would not prevent EPA from disapproving that state's SIP revision on the grounds that the revision would interfere with attainment in other states.

VI. Incentives for Parties to Keep Commitments to Program

Once it comes into effect, National LEV is designed to be a stable program that will remain in effect until replaced by mandatory federal tailpipe standards of at least equivalent stringency, provided such standards are necessary and cost-effective. Manufacturers have the option, but not the requirement, to participate in National LEV. Manufacturers have indicated a willingness to opt into the program, but only if the EPA and the OTC States make certain commitments. To give the manufacturers both assurance that the commitments will be kept and recourse if they are not, the program includes a few specified conditions (''offramps'') that would allow manufacturers to opt out of National LEV if EPA or the OTC States did not keep their commitments. In addition, the OTC States also need assurance that National LEV will continue to provide the benefits they anticipated when they opted into the program, both in terms of the number of manufacturers covered by the program and the level of emissions reductions that the program was designed to achieve. Thus, National LEV also includes limited offramps for the OTC States to protect against changes in anticipated emission benefits or the number of covered manufacturers. Both the manufacturers' and the OTC States' offramps, set forth in 40 CFR 86.1707, are structured to maximize all parties' incentives to maintain the agreed-upon program provisions and thereby to maximize the stability of National LEV over its intended duration.

In the unlikely event that any of the offramps were triggered and manufacturers or OTC States opted out, today's regulations set forth which requirements would apply, the timing of such requirements, the states in which they would apply, and the manufacturers that would have to comply with them. The main purpose of these provisions is to enhance the stability of the program by minimizing the incentives for EPA or the OTC States to act in a manner that would trigger an offramp. Additionally, EPA has structured the offramp provisions such that no single event automatically would end the National LEV program. EPA will continue to make National LEV available as long as one or more manufacturers and one or more OTC States wish to remain in the program. EPA recognizes, of course, that if a significant number of OTC States or manufacturers were to opt out of National LEV, after a certain point it is unlikely that the remaining parties would choose to continue the program. However, the issue is highly unlikely to arise, and if it did, it is not clear what would be the critical mass of opt-outs sufficient to end the program. Rather than deciding now how many OTC State and auto manufacturer opt-outs would be significant enough to end National LEV, EPA believes it is both more appropriate and more efficient to leave that decision to the OTC States and manufacturers to decide, in the unlikely event that an offramp is triggered and significant opt-outs occur. EPA has received no comments on the SNPRM opposing this general approach.

In the NPRM, EPA proposed that the manufacturers' right to opt out of the National LEV program would be limited to two conditions. These offramps were: (1) EPA modification of a Stable Standard, except as specifically provided, and (2) an OTC State's failure to meet or keep its commitment regarding adoption or retention of a state motor vehicle program under section 177. The Final Framework Rule addressed the first offramp (recodified in today's rule at 40 CFR 86.1707(d)), which would allow manufacturers to opt out of National LEV if EPA were to modify a Stable Standard except as provided for under the National LEV regulations. The second offramp is addressed in today's Final Rule. EPA also is adding a third type of offramp related to auto manufacturers' concerns regarding the effects of using federal fuel (instead of California fuel) on emissions control systems. This is discussed in section VI.C below. In addition, as proposed in the SNPRM, today's Final Rule includes a fourth type of offramp that allows manufacturers to opt out based on an OTC State or another manufacturer legitimately opting out of National LEV. Today's rule also finalizes two offramps for OTC States. An OTC State may opt out if a manufacturer opts out or if EPA makes a finding that National LEV will not produce (or is not producing) emissions reductions in the OTR equivalent to state Section 177 Programs in the OTR. Finally, this section discusses EPA's interpretation of Section 177 if an offramp is taken.

A. Offramp for Manufacturers for OTC State Violation of Commitment

As established in today's Final Rule, there are several ways in which an OTC State might break its commitment and thereby allow manufacturers to opt out of National LEV. These are: (1) taking final action in violation of the commitment to continue to allow National LEV as a compliance alternative to a Section 177 Program or to a ZEV mandate (in those OTC States without existing ZEV mandates); (2) failing to submit a National LEV SIP revision within the timeframe set forth in the National LEV regulations; (3) submitting an inadequate National LEV SIP revision; and (4) taking final action (by an OTC State without an existing ZEV mandate) adopting a ZEV mandate effective during the state's commitment to National LEV.[20] The discussion below addresses each of these possible types of OTC State violations individually. EPA does not believe that any of these scenarios are likely to arise under the National LEV program. Nevertheless, spelling out in the regulations the consequences under each of these scenarios will provide the parties certainty regarding the worst-case outcomes, and more importantly, allows EPA to structure the consequences so as to minimize the likelihood that any of these scenarios will occur.

1. OTC State No Longer Accepts National LEV as a Compliance Alternative

The most significant way in which an OTC State could violate its commitment to National LEV would be to attempt to have a Section 177 Program that was in effect during the state's commitment to National LEV[21] and that did not allow National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative.[22] (An OTC State would not be in violation of its commitment under National LEV if it had (or adopted) a Section 177 Program that was effective after the end of its commitment to National LEV that did not allow National LEV as a compliance alternative.) This could happen if an

[20] In addition, as discussed in the following section, manufacturers may opt out if an OTC State takes a legitimate offramp.

[21] An OTC State's commitment to National LEV lasts until MY2006, unless EPA fails to issue Tier 2 standards at least as stringent as National LEV on or before December 15, 2000, in which case the commitment lasts until MY2004.

[22] Throughout this preamble, EPA often uses ''National LEV as a compliance alternative'' as shorthand for ''National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative.''

OTC State accepted National LEV as a compliance alternative to a state Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) and then took final action purportedly removing the alternative compliance provisions from its regulations, leaving only the state Section 177 Program or ZEV mandate requirements in place. It would also happen if an OTC State took final action purportedly adopting a Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) without providing for National LEV as a compliance alternative. [23] This violation of the OTC State's commitment to National LEV attempts to impose a compliance burden directly on the manufacturers and would abandon the most fundamental element of the agreement underlying the voluntary National LEV program.

The consequences of such a violation, as discussed below and set forth in 40 CFR 86.1707(e), take into account the seriousness of the breach of the commitment, even though the violation would not necessarily directly burden the manufacturers. Once a state adequately commits to National LEV through an approved SIP revision, even if the state were to change its regulations to disallow compliance with National LEV, the requirement would not be enforceable until EPA approved a further SIP revision incorporating the change, as discussed above in section V.C.4. Yet, although the violation might not actually impose any burden on the manufacturers because it is not enforceable, manufacturers should not be bound to comply with more stringent National LEV requirements in the violating state and should not be bound to continue in the National LEV program, as even an unenforceable Section 177 Program would create risks and uncertainties for manufacturers. Manufacturers would be at risk of having to defend against a state enforcement action. The question of whether EPA could approve a proposed state SIP revision deleting National LEV as a compliance alternative—if only by virtue of the lack of precedence for this issue and its dependence on the specific facts—would create further uncertainty for manufacturers.

Manufacturers would be able to opt out at any time after an OTC State took final action that would (or attempted to) require manufacturers to comply with a Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) prior to the end of the state's commitment to National LEV without allowing them to comply with National LEV or mandatory federal standards of at least equivalent stringency as an alternative, even if the effective date of the state requirement were some time in the future. The final state action would be the action promulgating the state law or regulations at issue, not the act of defending such law or regulations in litigation. Thus, a self-effectuating state law purporting to impose a Section 177 Program without including National LEV as a compliance alternative would be final state action, as would final state regulations purporting to impose such a program. A state law directing the relevant state agency to change its regulations to remove National LEV as a compliance alternative would not be a final state action, but the regulations promulgated in accordance with that directive would be final state action.

The manufacturers commented that the definition of ''final state action'' should include the date on which a state passes legislation that requires a state environmental agency to eliminate National LEV as a compliance alternative, even if that state legislation is not self-effectuating. EPA is concerned that it may not necessarily be clear in a particular instance how a law directing a state agency to change its regulations relating to National LEV would actually be implemented by the state agency. Depending on the substantive results of the state rulemaking process implementing the directives of the law and the timing of such regulations, the state may or may not actually violate its commitment to the program. Rather than attempting to hypothesize the effect of final state regulations once promulgated, EPA believes it is appropriate to define a final state action as the action that finalizes the state law or regulations that would be directly applicable to the motor vehicle manufacturers upon the effective date of such law or regulations.

Today's rule provides that, if an OTC State were to violate its commitment by purportedly disallowing National LEV as a compliance alternative, there would be both automatic consequences in the violating state and an opportunity for manufacturers to opt out of National LEV.[24] Two significant elements determine the consequences in the violating state. The first element is the manufacturers' National LEV compliance obligations in the violating state. The second element is when the state Section 177 Program or ZEV mandate requirements apply to manufacturers. Outside of the violating state, manufacturers would continue to be subject to the National LEV requirements unless they opted out of the National LEV program.

Until the violating state's Section 177 Program or ZEV mandate requirements apply, the manufacturers' compliance obligations in that state would be governed by the terms of the National LEV regulations. In a state that had violated its commitment by attempting to have a Section 177 Program or ZEV mandate without allowing National LEV as a compliance alternative, beginning with the next model year,[25] the National LEV regulations would allow manufacturers to sell vehicles complying with Tier 1 tailpipe standards in that state and those vehicles would not be counted in determining whether the NLEV fleet average NMOG standard was met. Because model years generally run somewhat ahead of the calendar years with the same numbers, generally this will result in a near-term or immediate change in the manufacturers' compliance obligations.

EPA had proposed that, until the violating state's Section 177 Program requirements applied (which might not be until MY2006), the manufacturers would only have to meet the federal Tier 1 tailpipe standards for vehicles sold in the violating state, and those vehicles would not be used to calculate the manufacturers' fleet NMOG averages. Several commenters objected to this provision on the basis that the violating state or a downwind state might need emissions reductions from controls on new motor vehicles in the

[23] In addition, an OTC State with a Section 177 Program in its regulations at the time of opt-in that does not already permit manufacturers to comply with National LEV as a compliance alternative might fail to modify those existing regulations within the time-frame provided, which is the same as the deadline for submission of the state's SIP revision. The consequences of this type of violation would differ slightly from the consequences of other types of violations that attempted to have a Section 177 Program without allowing National LEV as a compliance alternative, as noted below in n.24.

[24] In an OTC State that had a Section 177 Program in its regulations at the time of opt-in and that had never accepted National LEV as a compliance alternative to the Section 177 Program requirements, the consequences in the violating state discussed in this section would not apply, given EPA's interpretation of section 177. See section VI.E. However, the provisions for a manufacturer's offramp would be the same for a state that failed to modify existing regulations to accept National LEV as a compliance alternative as for any other state action not allowing National LEV as a compliance alternative.

[25] The ''next model year'' would be the model year named for the calendar year following the calendar year in which the OTC State took final state action violating its commitment. For example, if an OTC State violated its commitment by taking final state action in calendar year 1999, the next model year would be MY2000.

violating state during the timeframe in which National LEV regulations required that federal Tier 1 standards be met in the violating state. In response, EPA is modifying this provision slightly to allow a violating state to ''cure'' a violation and regain the benefits of National LEV (with respect to manufacturers that had not opted out of National LEV) by reversing the action that caused the violation. EPA believes it is highly unlikely that a state would violate its commitment in the first place, let alone that it would do so and then reverse its action shortly thereafter. Nevertheless such a scenario can be envisioned, for example, in the situation where a state was counting on an alternative means of obtaining needed emissions reductions and then found that the alternative was for some reason not viable. EPA believes that it is appropriate to structure the National LEV regulations so as to maximize states' incentives to uphold their commitments to National LEV without, under certain circumstances, foreclosing a state from obtaining the benefits of National LEV for the remainder of the National LEV program.

Under today's final rule, rather than allowing manufacturers to sell only Tier 1 vehicles in a violating state for as long as the manufacturers are governed by National LEV in that state, if the violating state reverses its action (by taking final action withdrawing, nullifying or otherwise reversing the final action that violated its commitment), after a transition period, vehicles sold in that state by manufacturers that had not opted out of National LEV would once again be subject to the National LEV fleet average NMOG requirements. Vehicles would be subject to the fleet average NMOG standard as of the model year named for the second calendar year after the violating state took the final action reversing the action that broke its commitment or as of the model year named for the fourth calendar year following the calendar year in which the violating state took the final action, whichever is later. For example, if the violating action occurred in 1999 and the violating state reversed that action in 2000, vehicles sold in that state would count towards the NLEV NMOG fleet average starting with MY2003 (the model year named for the fourth calendar year following the calendar year in which the violating action occurred). If the violating action action occurred in 1999 and was reversed in 2002, vehicles in that state would count towards the NLEV NMOG fleet average starting with MY2004 (the model year named for the second calendar year in which the violating action was reversed). EPA believes that it is important to provide OTC States that commit to National LEV with an incentive to keep their commitments and that this approach provides such an incentive.[26]

The earliest date on which the violating state's Section 177 Program or ZEV mandate would apply is governed by the two model-year lead time requirement of section 177, EPA's regulations on model year at 40 CFR part 85 subpart X and the National LEV regulations. This date would apply only for any auto manufacturer that opted out of National LEV as a result of the violating state's action (provided that it is later than the effective date of the opt-out), for any auto manufacturer that decided to comply with the violating state's requirements even though it otherwise chose to stay in National LEV, and for all manufacturers if EPA approved the violating state's program into the SIP.[27] (As discussed above, EPA believes the violating state's refusal to allow National LEV as a compliance alternative would not otherwise be effective until MY2006 (or MY2004, if EPA failed to issue Tier 2 standards at least as stringent as National LEV on or before December 15, 2000).) Thus, if none of these situations occurred, the only requirements applicable to manufacturers in the violating state would be the National LEV regulations, which would allow manufacturers to sell in the violating state vehicles that meet Tier 1 tailpipe standards and to exclude those vehicles from the fleet average NMOG calculation for the time period discussed above.

After National LEV is in effect, a change to a state regulation that deletes National LEV as a compliance alternative attempts to change the manufacturers' obligations. In that circumstance, as discussed in section VI.E below, EPA interprets section 177 to require two years of lead time from the date that the state takes final action changing its regulations (or other law) deleting National LEV as a compliance alternative, regardless of when the state adopted its previous Section 177 Program. Thus, pursuant to the model year regulations at 40 CFR part 85 subpart X and today's regulations at 40 CFR 86.1707, the earliest the state Section 177 Program or ZEV mandate requirements could apply would be to engine families for which production begins after the date two calendar years from the date of the final state action. For example, if the violating state promulgated regulations purportedly removing National LEV as a compliance alternative on June 1, 2000, the earliest the state Section 177 Program or ZEV mandate requirements could apply would be to engine families that began production on or after June 1, 2002, which might apply to some, but certainly not all, MY2003 vehicles.

In the SNPRM, EPA raised the issue of whether manufacturers should have at least four, rather than two, years of lead time from the date that the state takes final action changing its regulations to delete National LEV as a compliance alternative. The manufacturers' comments advocated that there should be four years of lead time from the date of the state violation of its commitment, but they did not suggest any way (other than enforcing the commitment in a SIP) to make such a requirement for lead time legally enforceable against a state that was already in violation of its commitment to accept National LEV as a compliance alternative to a state Section 177 Program. Numerous other commenters opposed the idea of providing four years of lead time on the basis that it is contrary to the statutory language governing lead time for state programs adopted under section 177. The MOUs initialled by the OTC and manufacturers' organizations did not

[26] The commenters mistakenly assumed that, in the absence of this provision, a state that broke its commitment would immediately get the benefits of a state Section 177 Program. Rather, under section 177, a violating state would only be entitled to Tier 1 vehicles for at least two years after it broke its commitment. Thus, for at least two years, the National LEV provision that manufacturers that stay in the program are obligated to provide only Tier 1 vehicles in the violating state is consistent with what would happen under section 177 if the violating state's action ended the program. (For ease of administration, if a violating state is in and then out and then back in the National LEV program, EPA has extended the period that would otherwise be provided by section 177 to ensure that when a states' vehicles again count towards calculation of the NMOG average, all of a manufacturer's vehicles in the first covered model year count towards the NMOG average.) Even were lead time not required by section 177, EPA believes it is appropriate to give manufacturers time to comply with new motor vehicle requirements pursuant to a change in a state's requirements.

[27] Some commenters have expressed the view that, if an OTC State were to delete National LEV as a compliance alternative, the State's new (or revised) Section 177 Program would not be preempted by the federally approved National LEV SIP revision nor would EPA have the legal authority to disapprove the revised state program if it were submitted to EPA for approval into the SIP. As discussed in this preamble and the Response to Comments for today's rule, EPA disagrees with these commenters. However, if these commenters were correct regarding the legal status of the revised state program disallowing National LEV as a compliance alternative, the earliest date on which the violating state's Section 177 Program or ZEV mandate would apply is governed by the lead time requirements in section 177 and EPA's regulations on model year at 40 CFR Part 85 subpart X and in the National LEV regulations.

allude to a four-year lead time under any circumstances, indicating that the parties had not raised this in their negotiations, let alone agreed upon it, as an appropriate element of the National LEV program. Finally, the National LEV regulations provide several other significant disincentives to an OTC State breaking its commitment, as discussed in this section, and a four-year lead time would likely add little to these existing disincentives. Thus, EPA does not believe it would be reasonable to try to require a four-year lead time under section 177 for a state violation of its commitment to National LEV.

The combined effect of the National LEV regulations allowing manufacturers to comply with Tier 1 tailpipe standards in the violating state and the requirement for two-years lead time before the state Section 177 Program or ZEV mandate requirements could apply means that, if an OTC State were to violate its commitment by not allowing National LEV as a compliance alternative, manufacturers would be subject to only Tier 1 tailpipe standards (and not the NLEV NMOG average) in that state for at least two years. As a consequence, the violating state could not claim SIP credits for control of emissions from new motor vehicles meeting anything more stringent than Tier 1 tailpipe standards during that period. EPA believes that this would provide a powerful incentive for the OTC States to uphold their commitments to accept National LEV as a compliance alternative for the specified duration.

EPA recognizes that it may take manufacturers some time to take advantage of the less stringent Tier 1 tailpipe standards, and that, consequently, the hardware of the vehicles supplied to the violating state may not change dramatically in the short-term. However, manufacturers would be able to revise vehicle compliance levels rapidly to provide that, for warranty and recall purposes, the vehicles are only complying with Tier 1 tailpipe standards. This means that, over the life of those vehicles, they would only be required to produce emissions below the 50,000 mile and 100,000 mile Tier 1 standards and enforcement action could not be taken to require those vehicles to meet any more stringent standards.[28] As long as manufacturers are not required to sell vehicles meeting standards more stringent than Tier 1 in the violating state, it would not be appropriate for EPA to approve SIP credits for any emissions reductions beyond the levels provided by Tier 1 tailpipe standards. Those vehicles would not be included in calculating the manufacturers' compliance with the National LEV fleet average NMOG standards. Thus, the state would not receive emission credits beyond Tier 1 levels if the vehicles sold in that state were certified to Tier 1 levels when sold in that state because the SIP would not provide in any way for such vehicles to meet emission standards more stringent than Tier 1 levels.

In addition to the relaxed emissions standards that would apply to vehicles sold in the violating state, the other incentive for OTC States not to violate their commitments is that manufacturers would also be able to opt out of National LEV if an OTC State violated its commitment to the program by not allowing National LEV as a compliance alternative. As proposed, the FRM does not set a time limit for manufacturers to exercise their right to opt out as long as the state is in violation of its commitment. After a manufacturer opted out, there also would be no opportunity for the state to cure the violation by changing the state law or regulations to accept National LEV as a compliance alternative and thereby negate an opt-out that a manufacturer had already submitted, regardless of whether that opt-out had become effective already. However, once a violating state took final action to cure the violation, manufacturers that had not already opted out could not opt out based on the violation that the state had cured.

The Final Framework Rule gives EPA an opportunity to make a finding as to the validity of an opt-out based on a change to a Stable Standard. *See* 62 FR 31202–07. This both provides a safe harbor for a manufacturer that relies on an EPA determination of validity, and provides for rapid resolution in the United States Court of Appeals for the District of Columbia if the validity is disputed, thereby avoiding protracted litigation in federal district court. In contrast, EPA does not believe such a process is necessary here. The validity of an opt-out based on a state disallowing National LEV as a compliance alternative should be a straight-forward factual determination. Consequently, EPA believes there is very little benefit to be gained by providing for an EPA determination of the validity of such an opt-out, and today's final rule does not provide for such a determination.

As proposed, a manufacturer that opts out of National LEV based on a state violation of its commitment to National LEV must continue to comply with National LEV until the opt-out becomes effective (although Tier 1 tailpipe standards will apply in the violating state, as discussed above). A manufacturer's opt-out notification must specify the effective date of the opt-out, which in no event could be any earlier than the next model year (i.e., the model year named for the calendar year following the calendar year in which the manufacturer opted out).[29] After the effective date of its opt-out, a manufacturer would have to comply with any non-violating state's Section 177 Program (except for ZEV mandates) provided that at least two-years lead time (as provided in section 177) had passed since the adoption of the state's Section 177 Program. Other than those ZEV mandates that would be unaffected by the National LEV program (i.e., existing ZEV mandates), if a manufacturer opts out, it would not be subject to any other ZEV mandates until two years of lead time had passed, which would run from the date the manufacturer opts out of National LEV and be measured according to the section 177 implementing regulations. After the effective date of a manufacturer's opt-out, in a non-violating state without a Section 177 Program, the manufacturer must meet all applicable federal standards that would apply in the absence of National LEV.

The following summarizes the tailpipe standards that would apply if an OTC State violated its commitment by not allowing National LEV as a compliance alternative. For vehicles sold in the violating state, all manufacturers would be allowed to sell vehicles meeting Tier 1 standards and to exclude those vehicles from the NMOG fleet average beginning in the next model year after the date of the state violation for at least the two-year lead time set forth in section 177 and the implementing regulations; then manufacturers would become subject to the state Section 177 Program only if the manufacturer opted out of National LEV and its opt-out had become effective, if the manufacturer decided to comply with the violating state's new Section

[28] See section VIII.C for discussion of how EPA's vehicle certification process would allow a manufacturer to provide vehicles meeting Tier 1 standards in a violating state.

[29] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after that state's opt-out became effective. As discussed below in section VI.D, an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two-years lead time.

177 Program while remaining in National LEV, or if EPA approved the state's requirements into the SIP. If a manufacturer opted out, before the opt-out became effective, the manufacturer would continue to be subject to all National LEV requirements for vehicles sold outside of the violating state. Once a manufacturer's opt-out had become effective, for vehicles sold outside of the violating state, the manufacturer would have to comply with any backstop state Section 177 Programs (except ZEV mandates) that a state had adopted at least two years before the effective date of opt-out and, in other states, would have to comply with all applicable federal standards that would apply in the absence of National LEV. Manufacturers would not have to comply with any ZEV mandates (except those that were unaffected by National LEV) until the model year that would start two years after the date EPA received the manufacturer's opt out. Manufacturers that did not opt out would continue to be subject to all National LEV requirements for vehicles sold outside of the violating state and, in the violating state, would be allowed, under the National LEV regulations, to sell vehicles meeting Tier 1 tailpipe standards for two years following the state violation and to exclude those vehicles from the NMOG fleet average. However, if the violating state reversed the action that broke its commitment, vehicles sold in the violating state would count towards the NLEV NMOG fleet average as of the model year named for the second calendar year after the violating state took the final action reversing the action that broke its commitment or as of the model year named for the fourth calendar year following the calendar year in which the violating state took the final action breaking its commitment, whichever is later.[30] To the extent these provisions would give a manufacturer less than the two-years lead time set forth in section 177, the manufacturer would waive that protection by opting into National LEV and then setting an effective date in its opt-out notification that was earlier than the two-years lead time would provide. To the extent these provisions would give a manufacturer more than the two-years lead time set forth in section 177, by opting into National LEV the OTC States agree to provide the additional time.

2. OTC State Fails to Submit SIP Revision Committing to National LEV

The second way in which an OTC State could violate its commitment to National LEV would be to fail to submit a SIP revision to EPA containing the state's regulatory commitment to the program. The consequences of this violation differ slightly from a situation where a state does submit such a SIP revision, receives EPA approval for it, but then violates the commitment by attempting to remove National LEV as a compliance alternative. Failure to submit a SIP revision would not necessarily indicate that the state was attempting to impose a compliance obligation on the manufacturers contrary to the terms of the fundamental agreement underlying the voluntary National LEV program. Consequently, if manufacturers did not choose to opt out of National LEV, they would continue to be subject to all the National LEV requirements for vehicles sold both within and outside of the violating state, and the National LEV program would continue. However, the portion of the OTC State commitments to be contained in the SIP revisions is critical to the long-term enforceability of the state commitments, so EPA believes it is important to allow the manufacturers to opt out of National LEV if a state fails to submit a SIP revision. This will provide incentive for OTC States to submit their National LEV SIP revisions and provide manufacturers recourse in the event of a state failure to do so. This offramp is addressed in 40 CFR 86.1707(f).

As under the previous scenario, there would be no time limit for manufacturers to exercise their right to opt out of National LEV if an OTC State had missed the deadline for its National LEV SIP revision and had not yet submitted such a SIP revision. Once the state submitted its SIP revision, even if after the deadline, manufacturers would no longer have the opportunity to decide to opt out of National LEV. Unlike the previous scenario, a state that had missed the deadline for its SIP submission would have a limited opportunity to cure the violation. For the first six months from the deadline for the SIP submission, manufacturers would only be able to opt out conditioned on the state not submitting a SIP revision within six months of the initial deadline. If the state submitted the revision within that six-month grace period, any opt-outs based on that violation would be invalidated and would not come into effect.

The manufacturers commented that the National LEV regulations should not provide a six-month grace period for states to submit their SIP revisions beyond the one-year (or for a few states, eighteen-month) period provided for the SIP submissions because the deadline provides states adequate time to submit their SIP revisions. EPA believes this limited opportunity to cure is appropriate here. While the timeframes provided for the OTC States to submit their SIP revisions are feasible, they are very tight and do not give much leeway for delays that may occur in the state regulatory processes. Moreover, the MOUs initialed by the OTC and the manufacturers' associations provided that OTC States would have two years to submit their SIP revisions committing to National LEV. Even if they needed to take advantage of the grace period, the deadline for most of the OTC States to submit their SIP revisions to EPA would still be sooner than provided under the initialed MOUs and no state would have a deadline any later than the MOUs provided. In light of this, together with the fact that failure to submit this SIP revision would not pose the risk of any immediate change in the manufacturers' compliance obligations, it is reasonable to provide a limited grace period for OTC States to submit their SIP revisions without jeopardizing the benefits of the National LEV program.

After the six-month grace period, the state's submission of a SIP revision would not negate a manufacturer's opt-out that EPA had already received, even if the manufacturer's opt-out had not yet become effective. However, no manufacturer would be able to opt out after the state submitted the SIP revision, no matter how late the state was. As under the previous scenario, whether or not an OTC State has failed to submit a SIP revision by a given date and thereby provided a basis for an opt-out is a very clear cut issue. Consequently, EPA is not providing for an EPA determination of the validity of an opt-out based on this violation.

If a manufacturer opts out it may set the effective date of its opt-out no earlier than MY2000 (or MY2001 if the violating state is the District of Columbia, New Hampshire, Delaware or Virginia) or the next model year after EPA's receipt of the opt-out, whichever is later.[31] If a manufacturer opts out of

[30] For example, if the violating action occurred in 1999 and the violating state reversed that action in 2000, vehicles sold in that state would count towards the NLEV NMOG fleet average starting with MY2003 (the model year named for the fourth calendar year following the calendar year in which the violating action occurred). If the violating action occurred in 1999 and was reversed in 2002, vehicles in that state would count towards the NLEV NMOG fleet average starting with MY2004 (the model year named for the second calendar year after which the violating action was reversed).

[31] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after the state opt-out became

Continued

National LEV, in the violating state, the National LEV regulations would allow the manufacturer to meet Tier 1 tailpipe standards and would not require those vehicles to be included in the fleet average NMOG calculations. These special provisions for vehicles sold in the violating state generally would start with the next model year after EPA receives the manufacturer's opt-out notification (e.g., MY2000 for a manufacturer that opts out in calendar year 1999) and continue until the effective date set in the opt-out notice.[32] As under the scenario above, the violating state would not receive SIP credits for emissions reductions from vehicles meeting anything more stringent than the Tier 1 tailpipe standards while those standards apply. Once the manufacturer's opt-out had become effective, the manufacturer would be subject to a Section 177 Program in the violating state if the two-year lead time requirement of section 177 had been met.

If a manufacturer opted out of National LEV, in non-violating states it would continue to meet all National LEV requirements until the effective date of its opt out. For vehicles sold in the nonviolating states, once the opt-out became effective the manufacturer would be subject to any backstop Section 177 Programs for which the two-year lead time requirement of section 177 had been met (running from the date the state adopted the backstop program), or would be subject to Tier 1 requirements in states without such programs. Manufacturers would not have to comply with any ZEV mandates (except those that were unaffected by National LEV) until the model year that would start two years after the date EPA received the manufacturer's opt-out notification. To the extent that these regulations would provide a manufacturer with less than the two-year lead time set forth in section 177, the manufacturer waives that protection by opting into National LEV and then setting an effective date in its opt-out notification. To the extent that these provisions would provide manufacturers more than the two-years lead time set forth in Section 177, by opting into National LEV the OTC States agree to provide the additional time.

effective. As discussed below in section VI.D an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two-years lead time.

[32] However, these special provisions would start no earlier than MY2001 if the District of Columbia, New Hampshire, Delaware or Virginia were the violating state and no earlier than MY2000 if another OTC State were the violating state.

3. OTC State Submits Inadequate SIP Revision Committing to National LEV

A third way in which an OTC State could violate its commitment to National LEV would be to submit a SIP revision that did not meet the requirements for a National LEV SIP revision, and thus did not adequately commit the state to the National LEV program. Today's rule, 40 CFR 86.1707(g), maintains the principle EPA had proposed, specifically that a violation of this commitment would allow manufacturers to opt out. However, today's rule takes a somewhat different approach towards when a manufacturer could opt out based on an inadequate SIP revision.

EPA proposed that manufacturers would be able to opt out if EPA disapproved a National LEV SIP revision, and either the state failed to submit a corrected SIP revision within one year of EPA's disapproval, or the state submitted a modified SIP revision and EPA subsequently disapproved the revision. Under the proposal, the date of the violation that would allow a manufacturer to opt out of National LEV would be either the state's failure to submit a National LEV SIP revision committing to National LEV within one year of EPA's disapproval of its initial SIP revision, or publication of EPA's second disapproval. EPA also considered and took comment on several alternative approaches.

The auto manufacturers' comments supported their right to opt out if an OTC State were to submit an inadequate National LEV SIP submission, but opposed the proposed process and timing for using such an offramp. The manufacturers believe that the proposal did not provide them a real opportunity to opt out in a timely fashion if a SIP submission did not adequately commit an OTC State to National LEV. The manufacturers calculated that EPA's proposal might not allow them to opt out until MY2004 if a state submitted an inadequate SIP. Given the expected duration of National LEV, the autos felt this effectively prevented them from opting out if a state were to fail to submit an adequate SIP revision.

The SIP revisions are a critical component of the OTC States' commitments to National LEV. The auto manufacturers should have a right to opt out of the program if an OTC State that has opted into National LEV does not follow through on its commitment. EPA agrees with the manufacturers that the proposal did not provide them an adequate or realistic opportunity to ensure that OTC States submitted adequate SIP revisions. Thus, the FRM takes a slightly different approach than EPA proposed.

Today's rule allows manufacturers to opt out of National LEV if an OTC State has not submitted an adequate SIP revision and either EPA has taken final action on the state's submission finding that it did not meet the requirements for a National LEV SIP revision or at least 12 months has passed since the state submitted its National LEV SIP submission to EPA and EPA has not approved it as meeting the requirements for a National LEV SIP revision. By prohibiting manufacturers from opting out until after EPA has had one year to take action on a SIP submission, the FRM respects EPA's role in evaluating and approving SIPS, as delegated by Congress under section 110(k) of the Act. By allowing manufacturers to opt out immediately if EPA disapproves a SIP submission or if EPA fails to act within one year of receiving the submission, it gives manufacturers a real opportunity to opt out in a timely fashion if a SIP submission is inadequate. This should provide additional incentive for OTC States to send in submissions that meet the requirements for adequate National LEV SIP revisions and thereby increase the stability of the program.

As with the other types of state violations, there is no deadline for manufacturers to opt out based on this offramp. Also, there would be no opportunity for an OTC State to cure the violation with respect to a manufacturer that had already opted out, although manufacturers that had not opted out could no longer do so once EPA had taken final action finding the State's submission met all the requirements for a National SIP revision. The action allowing opt out is very clear, and hence the regulations do not provide for an EPA determination of the validity of an opt-out based on this type of violation.

Again consistent with the previous scenarios, if a manufacturer opts out it may set the effective date of its opt-out as early as the next model year or any model year thereafter.[33] Manufacturers' obligations under National LEV and state Section 177 Programs would be identical to those described if a state failed to submit a SIP revision.

[33] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after the state opt-out became effective. As discussed below in section VI.D an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years lead time.

4. OTC State Without an Existing ZEV Mandate Adopts a Backstop ZEV Mandate

OTC States without ZEV mandates will also state in their opt-ins that they do not intend to adopt a ZEV mandate that would be effective during the state's commitment to National LEV. EPA took comment on whether auto manufacturers should be able to opt out if an OTC State without an existing ZEV mandate acted contrary to its stated intent and adopted a backstop ZEV mandate (i.e., a ZEV mandate that allows National LEV as a compliance alternative) with an effective date during the state's commitment to National LEV.[34] Today's final rule, 40 CFR 86.1707(h), provides such an offramp for manufacturers. EPA believes this is appropriate given the differing positions of the manufacturers (who wanted the OTC States to agree that they would not adopt a ZEV mandate) and the OTC States (who were willing to state their current intent not to adopt a ZEV mandate). It is also appropriate given that the OTC States without existing ZEV mandates have little incentive to adopt backstop ZEV mandates since they have agreed that a manufacturer would not have to comply with a backstop ZEV mandate until the later of the end of the OTC State's commitment to National LEV (MY2006 or MY2004, depending upon EPA's issuance of Tier 2 standards) or two years after either the manufacturer or the OTC State opts out of National LEV.

Sec. 86.1707(h) allows manufacturers[35] to opt out of National LEV if an OTC State without an existing ZEV mandate takes final action adopting a backstop ZEV mandate that would become effective during the state's commitment to National LEV. This offramp does not allow manufacturers to opt out if a state adopts a ZEV mandate that could not come into effect until the end of the state's commitment (i.e., until MY2006 or MY2004, depending on EPA's issuance of Tier 2 standards). Adoption of a backstop ZEV mandate would not impose an immediate compliance obligation on auto manufacturers, so EPA has structured the offramp and its consequences to be similar to those for an OTC State's failure to submit its National LEV SIP revision on time. Consequently, if manufacturers did not choose to opt out of National LEV, they would continue to be subject to all the National LEV requirements for vehicles sold both within and outside of the violating state, and the National LEV program would continue.

As for other offramps based on OTC State actions, there would be no time limit for manufacturers to exercise their right to opt out of National LEV if an OTC State without an existing ZEV mandate adopted a backstop ZEV mandate. Final action reversing the violating state's adoption of a backstop ZEV mandate would not negate a manufacturer's opt-out that EPA had already received, even if the manufacturer's opt-out had not yet become effective. However, if the violating state were to take final action reversing itself and deleting the backstop ZEV mandate, no manufacturer would be able to opt out after such final action. ''Final action'' shall have the same meaning here as discussed above in Section VI.A.1. EPA is not providing for an EPA determination of the validity of an opt-out under this provision because it should be very clear cut whether an OTC State has adopted a backstop ZEV mandate.

If a manufacturer opts out, it may set the effective date of its opt-out as early as the next model year after EPA's receipt of the opt-out notification.[36] If a manufacturer opts out of National LEV, in the violating state, the National LEV regulations would allow the manufacturer to meet Tier 1 tailpipe standards and would not require those vehicles to be included in the fleet average NMOG calculations. These special provisions for vehicles sold in the violating state would start with the next model year after EPA receives the manufacturer's opt-out (e.g., MY2000 for a manufacturer that opts out in calendar year 1999) and continue until the effective date set in the opt-out notice. As under the scenario above, the violating state would not receive SIP credits for emissions reductions from vehicles meeting anything more stringent than the Tier 1 tailpipe standards while those standards apply. Once the manufacturer's opt-out had become effective, the manufacturer would be subject to a Section 177 Program in the violating state if the two-year lead time requirement of section 177 had been met.

If a manufacturer opted out of National LEV, in non-violating states it would continue to meet all National LEV requirements until the effective date of its opt out. For vehicles sold in the nonviolating states, once the opt-out became effective the manufacturer would be subject to any backstop Section 177 Programs for which the two-year lead time requirement of section 177 had been met (running from the date the state adopted the backstop program), or would be subject to Tier 1 requirements in states without such programs. Manufacturers would not have to comply with any ZEV mandates (except those that were unaffected by National LEV) until the model year that would start two years after the date EPA received the manufacturer's opt-out notification. To the extent that these regulations would provide a manufacturer with less than the two-year lead time set forth in section 177, the manufacturer waives that protection by opting into National LEV and then setting an effective date in its opt-out notification. To the extent that these provisions would give manufacturers more than the two-years lead time set forth in section 177, by opting into National LEV the OTC States agree to provide the additional time.

B. Offramp for Manufacturers if OTC State or Manufacturer Legitimately Opts Out of National LEV

Following the general principle that parties should be able to exit National LEV if there is a significant change in the assumptions that underlay their decision to opt in initially, 40 CFR 86.1707(j) finalizes EPA's proposal that a manufacturer also could opt out if an OTC State or another manufacturer were to opt out of National LEV legitimately.[37] This offramp could be used within 30 days of EPA's receipt of an OTC State or a manufacturer opt-out. The manufacturer could set an effective date for its opt-out beginning the next model year after the date of the manufacturer's opt-out, or any model year thereafter. EPA would not determine the validity of opt-out under this offramp unless EPA is to determine the validity of the initial opt-out.

[34] If an OTC State without an existing ZEV mandate adopts a ZEV mandate that does not allow National LEV as a compliance alternative, the opt-out provisions discussed in Section VI.A.1 above apply.

[35] Only those manufacturers that are large enough that they would be subject to the ZEV mandate if it comes into effect could opt out based on an OTC State's adoption of a ZEV mandate.

[36] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after the state opt-out became effective. As discussed below in section VI.D an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years of lead time.

[37] The validity of any opt-out from National LEV would depend in part on whether the underlying condition allowing opt out has actually occurred. Where the initial OTC State or manufacturer's opt-out was invalid, it would not provide an offramp for another manufacturer to opt out of National LEV. Thus, throughout this notice when EPA refers to an initial opt-out as the condition that allows another opt-out, it refers only to valid initial opt-outs.

Manufacturers' obligations under National LEV and state Section 177 Programs would be identical to those described if a state failed to submit a SIP revision, except that no state would be a violating state. EPA received no comments on this provision.

C. Offramp for Manufacturers for EPA Failure to Consider In-Use Fuel Issues

Believing that the effects of fuel sulfur were not adequately addressed by EPA in the National LEV program, the auto manufacturers recommended in June, 1997, that National LEV should include an offramp for manufacturers related to in-use fuels issues and that they should be allowed to exit the National LEV program if EPA were to act (or fail to act) in a specified manner to resolve specific sulfur-related issues. Such an offramp would alleviate their concern that the sulfur levels of in-use fuels outside California may affect the on-board diagnostic (OBD) systems and tailpipe emissions of National LEV vehicles. The manufacturers outlined six different conditions related to EPA actions (or lack of action) on these issues that they believe should allow them to opt out of National LEV. In the SNPRM, EPA proposed an additional offramp that took into account three of the six conditions advanced by manufacturers and rejected the remaining three. (A complete discussion of these six conditions and EPA's rationale for selecting only three can be found in the SNPRM, 62 FR at 44768–44771.) The proposed offramp was structured such that manufacturers could opt out of National LEV only if EPA failed to consider certain vehicle modifications, on-board diagnostic control systems, or preconditioning of vehicles when requested to do so by a manufacturer as a result of an alleged effect of fuel with high sulfur levels. Today's final rule incorporates this offramp as it was proposed.

EPA recognizes that this remains an important issue for the manufacturers and other interested parties, and 40 CFR 86.1707(i) sets forth a process to allow potential problems related to potential fuel sulfur effects on emissions performance of National LEV vehicles to be addressed within the context of National LEV as more information becomes available. These problems will be addressed on a case-by-case basis. EPA will respond to a manufacturer's request, supported by data, for appropriate relief for a specific engine family or families adversely affected by sulfur in a manner covered by one of the conditions incorporated into the National LEV regulations for the fuel sulfur offramp.

EPA also recognizes that the effects of sulfur on emission control systems is an issue that raises concerns beyond the context of the National LEV program and is being addressed in numerous other actions. These include testing being done to support EPA's Tier 2 Study and the Ozone Transport Assessment Group's recommendation to EPA to explore reducing fuel sulfur levels. EPA is working with the various stakeholders in developing and analyzing data to quantify any sulfur effects on current and future technology vehicles. EPA has said that in appropriate instances, EPA will address sulfur effects on specific mobile source programs. In March, 1997, EPA released a paper entitled "OBD & Sulfur White Paper: Sulfur's Effect on the OBD Catalyst Monitor on Low Emission Vehicles." This paper summarized the sulfur concerns and the available data, and outlined EPA's approach to resolving OBD/sulfur issues on a case-by-case basis.[38] The fundamental suggested approach of addressing these issues on a case-by-case basis remains EPA's expected approach. The offramp related to fuel sulfur effects in today's final rule is entirely consistent with the approach outlined in EPA's revised paper.

Today's final rule contains a fuel sulfur offramp identical to that proposed in the SNPRM. This offramp could be triggered under the three following conditions:

(1) If, upon a written request from a manufacturer in relation to the certification of an OBD catalyst monitor system, EPA declines to consider the use of the system because it indicates sulfur-induced passes when exposed to high-sulfur gasoline, even though it functions properly on low-sulfur gasoline.

(2) If, upon a written request from a manufacturer, EPA declines to consider, on a case-by-case basis, the manufacturer's suggested modifications to vehicles that exhibit sulfur-induced malfunction indicator light (MIL) illuminations due to high-sulfur gasoline so as to eliminate the sulfur-induced MIL.

(3) If, upon a written request from a manufacturer, EPA declines to consider, on a case-by-case basis, prior to in-use testing, pre-conditioning procedures designed solely to remove the effects of high sulfur from currently available gasoline.

EPA has defined a process for manufacturers to opt out of National LEV if one of the conditions described above were to occur. A manufacturer must send a request to EPA in writing identifying the particular problem at issue, demonstrating that it is due to in-use fuel sulfur levels, requesting that EPA consider taking a specified action in response, and demonstrating the emissions impact of the requested change. For some changes, engineering judgement may be sufficient to demonstrate the emissions impact. The Agency would have 60 days to respond to the manufacturer's request in writing, stating the Agency's decision and explaining the basis for the decision. If EPA were to fail to respond in this manner in the timeframe allotted, manufacturers would have 180 days after the deadline for the EPA response to decide to opt out of National LEV. Once EPA responds to the manufacturer's request, even if after the 60-day deadline, a manufacturer that had not yet opted out based on this offramp would no longer be able to do so, although if EPA had already received a manufacturer's opt-out, that opt-out would be unaffected by EPA's subsequent response. Only the manufacturer that sent the initial request to EPA would be able to opt out if EPA failed to respond.

Consistent with opt-outs based on other offramps, a manufacturer that opts out based on this offramp must continue to comply with National LEV until the opt-out becomes effective. The manufacturer may set the effective date of its opt-out as early as the next model year or any model year thereafter.[39] After the effective date of its opt-out, the manufacturer would be subject to any backstop Section 177 Programs (except for ZEV mandates) provided that at least two-years lead time (as provided in section 177) had passed since the adoption of the state's Section 177 Program, or would be subject to Tier 1 requirements in states without such backstops. Other than those ZEV mandates that would be unaffected by the National LEV rogram (i.e., existing ZEV mandates), if a manufacturer opts out, it would not be subject to any other ZEV mandates until two years of lead time has passed, which would run from the date the manufacturer opts out of National LEV and would be measured according to the section 177 implementing regulations.

Several commenters highlighted this offramp as an area of some concern.

[38] OBD and Sulfur White Paper, March 1997 (Docket A–95–26, IV–B–06). This paper has been revised to address comments EPA received on the March, 1997 paper. A copy is included in the docket for this rule (A–95–26, VII–J–02).

[39] The next model year would be the model year named for calendar year after which EPA received the opt-out notification.

These comments and EPA's responses are detailed in the Response to Comments document. In general, the auto manufacturers felt that the proposed offramp did not go far enough to protect their interests. They would have preferred that the regulations allow a manufacturer to opt out if EPA did not approve the manufacturer's suggested solution to an alleged problem if the manufacturer felt corrective action was justified. EPA's proposed (and final) regulations instead require EPA to consider allowing corrective action based on a request from a manufacturer accompanied by a persuasive demonstration that a problem does indeed exist. EPA believes that following the manufacturers' approach would destabilize the program by putting EPA in what could be an untenable position of either giving a manufacturer the ability to opt out or allowing the manufacturer to dictate a substantive outcome which EPA did not believe was warranted.

Several state government commenters saw the addition of this offramp as a new issue that had not arisen in prior discussions and that had potentially destabilizing impacts on the National LEV program. The American Petroleum Institute likewise commented that it did not support this offramp. Contrary to some commenters' concerns, this offramp cannot be used by the manufacturers to dictate a particular result, nor does it destabilize the National LEV program. The offramp makes it clear that EPA intends to follow through on its commitment in the OBD & Sulfur Status Report to look at potential fuel sulfur effects on a case-by-case basis. The offramp does not expand whatever right to substantive judicial review a manufacturer would otherwise have of an EPA decision related to potential fuel sulfur effects. Rather, to avoid providing manufacturers an opportunity to opt out of the program, this offramp requires EPA to provide a written response to a manufacturers' request. Some commenters expressed the concern that this offramp would require EPA to act in the absence of necessary information. EPA does not read the provision that way. Rather, if a manufacturer submits insufficient information (perhaps by failing to characterize the potential fuel sulfur effect adequately or to provide adequate information regarding the effects of the requested change), EPA could deny the request or ask the manufacturer to submit additional information without triggering an offramp, provided that EPA explained its response in writing. EPA does not believe the fuel sulfur offramp destabilizes the National LEV program given that it sets up a process rather than requiring a substantive result and given that EPA does not foresee any problem complying with the process.

D. Offramps for OTC States

In light of the practically and legally binding commitments that the OTC States would make to the National LEV program, this Final Rule also identifies the limited circumstances under which the OTC States would no longer be bound by those commitments. There are two circumstances in which an OTC State could opt out of National LEV: (1) if a manufacturer were to opt out of National LEV; or (2) if, based on a periodic equivalency determination, EPA were to find that certain circumstances had changed that would have changed EPA's initial determination that National LEV would produce emissions reductions equivalent to OTC State Section 177 Programs. The first offramp, found in 40 CFR 86.1707(e) through (j), is being finalized as proposed. The second offramp, found in 40 CFR 86.1707(k), has been modified somewhat from the proposal, as described below in more detail. If an OTC State were to take an identified legitimate offramp from National LEV, it would no longer be bound by any commitments that it made to the program in its initial opt-in package, other than its commitment to follow the National LEV regulations to transition from National LEV to a state Section 177 Program. An OTC State that was already in violation of its National LEV commitments would not be able legitimately to opt out of National LEV based on a manufacturer's opt-out.

To opt out of National LEV, the state official that signed the commissioner's letter in that state would send EPA an opt-out notification letter. The letter would state that the OTC State was opting out of National LEV and specify the condition allowing the state to opt out. The date of the state opt-out would be the date that EPA received the opt-out letter, but there would be a two-year transition period before the state opt-out would become effective and the state could require compliance with a Section 177 Program or ZEV mandate (in a state without an existing ZEV mandate) without allowing National LEV as a compliance alternative. Whether an opt-out letter alone would itself remove National LEV as a compliance alternative as of the effective date of the opt-out depends on how the state regulations are written. In opting into National LEV the state could structure its regulations and SIP to provide that National LEV would not be an alternative to the state's Section 177 Program if the state had opted out of National LEV pursuant to the National LEV regulations and the opt-out had become effective.

1. Manufacturer Opt-Out

As proposed, an OTC State would be able to opt out of National LEV without violating its commitment if a manufacturer opted out of National LEV under one of the identified offramps for manufacturers.[40] All parties would have made the choice to opt into National LEV with an understanding about the manufacturers and states that would be subject to the program. If those fundamental assumptions were to change, the parties to the voluntary program should have the opportunity to reevaluate their commitments and choose to opt out. Some OTC States have indicated, for example, that they believe it would not be feasible in their states to have some manufacturers subject to National LEV while others that had opted out of National LEV were subject to Section 177 Program requirements.

If a manufacturer opted out, OTC States would have a three-month period to submit an opt-out letter. The start of the three-month period would depend on the reason the manufacturer opted out. If a manufacturer were to opt out because of state action or inaction, or because of EPA's failure to consider a manufacturer's request related to effects of in-use fuels, the three-month period would start on the date EPA received the manufacturer's opt-out notification.[41] For a manufacturer's opt-out based on a change to a Stable Standard, the three-month period would start on the date of EPA's finding that the opt-out was valid or the date of a final judicial ruling that a disputed opt-out was valid. If a state did not opt out within that three-month period, the opportunity to opt out based on that manufacturer action would no longer be available.

The state opt-out could not become effective until the state had provided manufacturers with the two-year lead time set forth in section 177, with the two-year lead time to start on the date

[40] The condition allowing an OTC State to opt out would only arise if the initial manufacturers' opt-out were valid. See n. 37.

[41] However, if a manufacturer were to opt out because a state failed to submit a SIP revision by the applicable deadline and the manufacturer submitted the opt-out notification within six months of the applicable deadline for the SIP revision, the manufacturer's opt-out would not be final until the end of that six-month period. That date (not the date of the manufacturer's opt-out) would start the three-month period for state opt out.

that EPA received that state's opt-out letter. Manufacturers commented that for manufacturers that had not opted out of National LEV, states that have opted out should provide four, rather than two, years of lead time. As discussed above in section VI.A.1, section 177 does not require states to provide manufacturers four years of lead time from the date that manufacturers are notified that the state will no longer accept National LEV as a compliance alternative to a state Section 177 Program. Several commenters opposed providing four years of lead time under any circumstances and agreed that section 177 does not provide such lead time. Moreover, the MOUs initialled by the OTC and the manufacturers' associations provided only two model years of lead time before a state election to no longer be bound by its obligations under the MOU would become effective. Thus, EPA believes it is appropriate to finalize the proposed approach, which provides for two years of lead time before a state opt-out becomes effective.

Until the OTC State's opt-out became effective, manufacturers that had not opted out of National LEV or whose opt-outs had not yet become effective would continue to be subject to all the National LEV requirements for vehicles sold in that state. Manufacturers whose opt-outs had already become effective would not be affected by the state opt-out. Once the state opt-out became effective, all manufacturers would be subject to the state's Section 177 Program, if it had been adopted at least two years previously.[42] As the existence of a manufacturer opt-out as the basis for the state opt-out is a simple factual determination, the rule does not provide for EPA to evaluate the validity of a state opt-out before it could become effective.

2. Periodic Equivalency Determination

EPA had proposed that an OTC State could opt out of National LEV if EPA were to change a Stable Standard in a way that made National LEV less stringent and, if the change had been known at the start of National LEV, it would have changed EPA's initial determination that National LEV would produce emissions reductions at least equivalent to the adopted OTC State Section 177 Programs. In today's Final Rule, EPA is departing somewhat from the proposal. Today's rule is very similar to the proposal regarding *how* subsequent equivalency determinations would be made, but takes a different approach regarding *when* they would be made. Today's rule allows an OTC State to request an equivalency determination at any time during the state's commitment to National LEV, rather than limiting states' ability to request such a determination to those times when EPA changes a Stable Standard. This offramp for OTC States is comparable to the manufacturers' offramp if EPA makes certain types of changes to Stable Standards that make the Standards more stringent.

In section IV above, EPA discussed its determination that National LEV would produce equivalent or greater emissions reductions than the alternative of adopted OTC State Section 177 Programs. In the modeling, EPA assumed that, in the absence of National LEV, Section 177 Programs would be in place in those OTC States that currently have adopted such programs (including backstop programs) and that, in all other states (except California) Tier 1 standards would apply through MY2004 and Tier 2 standards equivalent to National LEV would apply thereafter. Today's rule allows an OTC State that is in the National LEV program to request EPA to reevaluate whether National LEV is still equivalent to the alternative approach of OTC State Section 177 Programs. Within six months of receiving the request, EPA is to conduct such a determination.

As proposed, in reevaluating equivalency, EPA would use the same model and inputs as it used in the initial equivalency determination.[43] EPA would modify the modeling only to reflect (1) the effect of changes in EPA regulations governing new motor vehicles and implementation of such regulations (to the extent implementation is reflected in the model), and (2) the effect of having Section 177 Programs (identical in stringency to the Section 177 Programs modeled in the initial equivalency determination) in any additional OTC States that had adopted section 177 backstop programs after the initial equivalency determination. In reevaluating equivalency, EPA believes that the focus of the evaluation should be the ongoing validity of the initial decision to opt into National LEV, not whether the parties would make the same decision at the time of the reevaluation based on then-current conditions. This is consistent with the approach that the parties took to the periodic equivalency evaluation in the initialed MOUs. At the time of their opt-ins, the parties should not have anticipated that EPA would change its new motor vehicle regulations in a way that would affect one of the basic assumptions used to calculate the relative benefits of National LEV and the alternative of OTC State Section 177 Programs. Thus, it is appropriate to reevaluate the equivalency of the two approaches given such a change, and provide the OTC States an opportunity to opt out of National LEV if it is no longer equivalent to the alternative.

As proposed, the FRM provides that any equivalency reevaluation will include the effect of Section 177 Programs in any additional OTC States that adopt Section 177 Programs after the initial equivalency determination. This represents a compromise between the OTC States' and manufacturers' positions. In making the initial equivalency determination, EPA is comparing National LEV to the alternative of OTC State Section 177 Programs. See section IV. As discussed above, EPA's determination assumes that Section 177 Program requirements would apply in those OTC States that currently have the programs (including backstop programs) in their state law or regulations and that mandatory federal standards would apply in the other OTC States. The OTC States requested that EPA take a somewhat different approach to the initial equivalency determination by assuming that Section 177 Programs would also apply in particular OTC States that are currently in the process of developing such regulations. For the initial determination, such a change in the assumption about which OTC States have LEV programs would have no effect on EPA's finding that National LEV would produce emissions reductions at least equivalent to those that would be produced by the alternative. EPA performed a sensitivity analysis for the initial equivalency determination to analyze the effects of the most optimistic assumptions regarding adoption of Section 177 Programs by OTC States, which indicated that even with those assumptions National LEV would still produce emissions reductions equivalent to or greater than that alternative. However, given the OTC States' concern, EPA believes it would be appropriate to modify the inputs to any reevaluation to reflect the then-current reality in terms of which OTC States had actually adopted Section 177 Programs. The modeling would

[42] This is true even for a manufacturer that had opted out and set an effective date for its opt-out that was later than the effective date of the state's opt-out.

[43] Modeling assumptions that would remain unchanged from those used in the initial equivalency determination include: assumptions related to vehicle miles traveled, MOBILE5a model inputs, inspection and maintenance programs, reformulated gasoline, and permanent migration effects.

continue to assume that all states with Section 177 Programs would have the same requirements used in the initial equivalency modeling, as discussed above. Thus, the reevaluation would not reflect any changes in the states' legal authority under the CAA to adopt programs subsequent to their decision to opt into National LEV, but it would take into account subsequent actions taken by the OTC States based on legal authority they had at the time of the decision.

EPA does not believe it would be appropriate to include in the reevaluation of equivalency the effects of other changes in circumstances affecting emissions reductions under National LEV or the alternative, such as changes to California's LEV program. At the time of opt-in, all of the parties will be aware that circumstances might change over the period that National LEV is in effect. For example, California might modify its requirements during that time. In making the decision to opt into National LEV and choose it over the alternative for a given period of time, the parties will have to evaluate the likelihood that any of the relevant circumstances would change sufficiently to reverse their inclination to opt in. Thus, the OTC States will have to consider the likelihood that California would modify its CAL LEV requirements and the likely effect of such a modification, and decide whether to commit to National LEV in lieu of a state Section 177 Program that could include any subsequent changes to CAL LEV. By opting in, the OTC States will have made the decision that the possibility of those benefits is outweighed by the certainty of the benefits from National LEV (if it goes into effect). The reevaluation of equivalency should not allow parties to reconsider that initial choice with the benefit of hindsight. National LEV will only come into effect if the parties to the program commit to it for a specified duration, and an EPA change to the underlying standards should not become an opportunity to undermine that basic commitment.

Several commenters disagreed with this approach, arguing that any changes California makes to its LEV program should be reflected in any future equivalency determinations, particularly since California is contemplating tightening its LEV program. EPA believes that states should take the possibility of future changes to the California LEV program into account in deciding whether to opt in. As noted above, given the uncertainties regarding changes to California's program and the much greater benefits of National LEV as compared to OTC State Section 177 Programs (based on the current CAL LEV program), EPA believes it is reasonable and prudent for states to commit to keep National LEV as a compliance alternative until MY2006. EPA recognizes that this raises the possibility that OTC States might be foregoing enforcement of a tighter California LEV program for a year or two. However, for practical or legal reasons, states often have to make regulatory choices without complete information and taking one regulatory approach often precludes changing course in midstream even if it turns out that another approach might have been better.

Although today's rule generally adopts the approach to periodic equivalency findings contained in the MOUs initialed by the OTC and the auto manufacturers' trade associations, it does differ in one respect. Whereas the MOUs provided for such findings every three years and upon an OTC State's request, today's rule provides for such findings only upon the request of an OTC State that is participating in National LEV. There might not be a need for an equivalency finding every three years. If there is a need, an OTC State can request one.

If EPA were to find that National LEV was not equivalent to OTC State Section 177 Programs, under today's rule, the OTC States would have three months to opt out, running from the date that EPA found that National LEV would no longer produce emissions reductions equivalent to those that would be produced by OTC State Section 177 Programs. If a state did not opt out within that three month period, the opportunity to opt out based on that finding would no longer be available.

Also consistent with the other state offramp, a state opt-out based on a finding of inequivalency could not become effective for model years (as defined in Subpart X) that commence prior to the date two years after the date that EPA received the state's opt-out letter. If a state took this offramp, the manufacturers' obligations would be determined the same way as described in the preceding section (when an OTC State opts out because a manufacturer opted out).

E. Lead Time Under Section 177

Sec. 86.1707's provisions discussed above incorporate and rely on EPA's interpretation of section 177's requirements related to state adoption of the CAL LEV program. Section 177 of the Act provides the legal authority for states to adopt ''standards relating to the control of emissions from new motor vehicles'' and governs the timing of implementation of such requirements. It provides that a state may adopt new motor vehicle standards only if they are identical to California standards for a given model year for which EPA has granted a waiver, and the state must ''adopt such standards at least two years before commencement of such model year (as determined by regulation of the Administrator).'' EPA has previously adopted regulations interpreting this provision. See 40 CFR 85.2301 et seq. These regulations do not adequately address the issue of when the two-year lead time starts for backstop Section 177 Programs (i.e., a Section 177 Program that allows National LEV as a compliance alternative) after National LEV has come into effect.

Today's final regulations address the issue of when under section 177 and EPA's implementing regulations the two-year lead time period would start if, after National LEV came into effect, a state with a backstop Section 177 Program were to delete National LEV as a compliance alternative (either in violation of its commitment to National LEV or legitimately by taking an offramp) or if a manufacturer legitimately decided to opt out of National LEV. These regulations and EPA's underlying interpretation of section 177 apply only in the context of the National LEV program, and only in the special circumstances that arise when a state has a backstop Section 177 Program that allows National LEV as a compliance alternative and National LEV has gone into effect.

The intent of the two-year lead time provision in section 177 is obvious in the context of a state deleting National LEV as a compliance alternative in violation of its commitment. If a state has a Section 177 Program (or a ZEV mandate) that allows National LEV as a compliance alternative and National LEV is in effect, and then the state changes those regulations to require compliance with the Section 177 Program or ZEV mandate (and does so in a way that violates its commitment to National LEV), then the two-year lead time required by section 177 would start to run when the revised regulations (or other state laws) were adopted. Although the Section 177 Program (or ZEV mandate) was previously on the books, it would have been a very different program because it allowed National LEV as a compliance alternative. Deleting National LEV as a compliance alternative once National LEV is in effect is essentially the same as adopting a new Section 177 Program (or ZEV mandate), and section 177 prohibits states from enforcing a new program without providing at least two-years lead time.

The meaning of the two-year lead time provision in section 177 is ambiguous in the context of a backstop Section 177 Program (or ZEV mandate) where a state legitimately opts out of National LEV. There are at least three possible ways to approach this provision in this context. One possible approach is that the two-year lead time period starts when the state adopts the backstop Section 177 Program (or ZEV mandate). Under this interpretation, section 177 would require the state to have adopted its backstop Section 177 Program (or ZEV mandate) at least two years before the model year to which it applies. After the two-year lead time had run from the date of adoption, the state could remove National LEV as a compliance alternative and require immediate compliance with the Section 177 Program (or ZEV mandate) at any time. Another possible approach is that, if a manufacturer will need to comply with a state Section 177 Program after National LEV has come into effect, the two-year lead time runs from the date that the manufacturer knew that it would need to comply with the state Section 177 Program rather than with National LEV. Several of the OTC States' comments strongly supported the first approach, focusing on section 177's use of the word ''adopt.'' In addition, these commenters expressed concern that the second approach, which EPA proposed, could set a precedent for other reinterpretations to ''fit unique circumstances.'' The comments stated that it would be inappropriate to discourage a state from availing itself of a right granted by Congress, and they stated that EPA's proposed interpretation is inconsistent with the CAA and federal district and appellate court decisions.

Nevertheless, EPA does not believe the first approach is a proper application of section 177 in the National LEV context. The two-year lead time requirement is intended to give manufacturers time to make the changes in product planning, production and distribution that are involved in switching from one motor vehicle program to another. It recognizes the practical difficulties in making large production shifts in very short time-frames. Where manufacturers have had the legal authority to comply with National LEV in lieu of the state program, allowing states to drop National LEV as a compliance alternative with no lead time would prevent manufacturers from receiving the protection that Congress conferred on manufacturers in section 177.[44] EPA does not believe it is appropriate to interpret the statute in a manner that negates the intended purpose of the provision, and hence does not agree that the alternative interpretation is inconsistent with either the CAA or the court cases to date that have addressed the implementation of section 177. In addition, EPA is explicitly stating that this interpretation is only warranted by and is confined to the unique circumstances presented by backstop programs under National LEV, and thus EPA does not believe this interpretation will set a precedent that could be applied in inappropriate circumstances. Finally, EPA does not agree that this interpretation discourages a state from exercising a right provided by Congress. EPA does not believe that Congress provided a state the right to accept National LEV as a compliance alternative and then impose a backstop Section 177 Program without providing any time for the manufacturers to meet the new requirements. Thus, EPA is not adopting this approach.

EPA is therefore adopting the second approach to section 177 under these limited circumstances. EPA believes this is the most appropriate way to implement section 177 in this special circumstance, as long as manufacturers are able to waive the two-year lead time requirement. Given that the failure to provide statutory lead time renders noncomplying state programs unenforceable, rather than rendering them void,[45] there should be little question that manufacturers have the ability to waive the lead time requirement if they choose. The manufacturers' comments did not question their ability to waive lead time under section 177. This approach to section 177 (including both when lead time starts and that manufacturers can waive the lead time) ensures that, in the context of National LEV and state backstop Section 177 Programs, two of Congress' purposes in adopting section 177 are met—it protects manufacturers from having insufficient time to switch from one motor vehicle program to another, and it allows states to ensure that they can achieve the extra emissions reductions from motor vehicles contemplated by section 177.

However, the OTC States indicated that even if section 177 did not require the amount of lead time incorporated in the National LEV regulations, the OTC States were willing to agree to provide that lead time. Thus, as an alternative legal theory independent of the proper interpretation or application of section 177, by opting into National LEV, the OTC States agree to provide manufacturers with the lead time provided in the National LEV final regulations if a state deletes National LEV as a compliance alternative (including legitimately opting out of National LEV) or a manufacturer legitimately opts out of National LEV.

EPA's interpretation of section 177 is reflected in today's final regulations 40 CFR 86.1707 regarding what requirements would apply in the unlikely event that an OTC State were to break its commitment to National LEV or that a manufacturer or an OTC State were to opt out of National LEV. For example, if a state with a backstop Section 177 Program were to delete National LEV as a compliance alternative after National LEV had come into effect, the state would have changed the manufacturers' regulatory obligations and the manufacturers would be entitled to two-years lead time running from the date of the state action purporting to change the manufacturers' regulatory obligation. By opting into National LEV, manufacturers would not be agreeing to waive the lead time required under section 177 in a circumstance where a state broke its commitment to National LEV and deleted National LEV as a compliance alternative. Thus the manufacturer would get the full two-years lead time set by section 177.

Another example demonstrates how the waiver provision modifies the two-year lead time. If an offramp were triggered and a manufacturer were to decide to opt out of National LEV and then set an effective date one year from the time of its opt out, under today's regulations, upon the effective date of the opt out, the manufacturer would be required to comply with Section 177 Programs (except for backstop ZEV mandates) in any state that had not broken its commitment to National LEV. To the extent that this provides the

[44] EPA is rejecting the date of state adoption of regulations as the starting date for determining whether the section 177 lead time requirement has been met *only* in those situations where a state has adopted a backstop Section 177 Program and National LEV has come into effect. For those states that already have backstop Section 177 Programs, if National LEV does not come into effect, the date of adoption of the state regulations is still the controlling date for determining when the two-year lead time requirement has been met. In those states, the only legal option available to manufacturers has been to comply with the state Section 177 Program. The theoretical possibility that they might not have to comply with the state requirements does not mean that they have not been given the two-year lead time required by section 177. EPA did not receive any comments disagreeing with this application of section 177.

[45] *See American Automobile Manufacturers Ass'n* v. *Greenbaum*, No. 93–10799–MA, slip op. at 23, 1993 WL 442946 (D. Mass. Oct. 27, 1993), *aff'd.*, 31 F.3d 18 (1st Cir., 1994).

manufacturer with less than two-years lead time, the manufacturer will have waived the lead time provision by opting into National LEV combined with setting the effective date for its opt-out. For backstop ZEV mandates, however, manufacturers would not have to comply with the ZEV mandate until the two-year lead time period had passed (which would start running from the date of the manufacturer's opt-out) because in opting into National LEV manufacturers are not waiving the two-year lead time with respect to ZEV mandates. Additionally, by opting in, the OTC States are agreeing to provide this two-years of lead time regardless of the applicability of section 177.

A third possible approach to section 177's two-year lead time requirement provides an alternative basis for today's rule. Under this approach, the lead time requirement differs depending upon the factual setting. In some instances, measuring lead time from the date of state adoption of a backstop Section 177 Program still provides manufacturers adequate protection and thereby implements both the clear language of the statute and the clear intent of the provision. For example, in opting into National LEV, a manufacturer is choosing to accept a compliance alternative that involves some risk of a rapid change in the manufacturer's regulatory obligations if the manufacturer opts out. However, as provided here, the program that the manufacturer is opting into provides substantial protection for manufacturers with regard to the applicability of backstop Section 177 Programs upon an opt-out. Because the manufacturer controls the effective date of the opt-out and the manufacturer would not be subject to a backstop Section 177 Program until its opt-out became effective, the manufacturer can ensure that it does not become subject to a Section 177 Program without whatever lead time it views as adequate. In this situation, the statutory intent to ensure that manufacturers have lead time is met by providing that a state can immediately implement a Section 177 Program for any manufacturer whose opt-out from National LEV is effective, if the backstop Section 177 Program was adopted at least two years previously. Thus, for situations where the manufacturer controls the date that it becomes subject to the Section 177 Program, section 177 would start the two-year lead time period from the date of state adoption of the backstop Section 177 Program.

The other type of situation is one where the state takes an action imposing requirements on a manufacturer under section 177 and the manufacturer has no control over the timing of those requirements. For example, a state might remove National LEV as a compliance alternative from its state regulations, leaving only the Section 177 Program requirements in place, which the state had adopted at least two years earlier. In that instance, making the manufacturer immediately subject to the section 177 requirements would be contrary both to the purposes of the section 177 lead time requirement and to the intended operation of National LEV. By opting into National LEV the manufacturer did not accept the possibility that a state might commit to National LEV and then violate that commitment. Nor is there any way for the manufacturer to protect itself against an immediate application of the section 177 requirements by the violating state, except not to opt into National LEV at all. Under the circumstances where the state controls the timing of the applicability of the Section 177 Program, the section 177 lead time provisions would be implemented by requiring two years of lead time from the date that the manufacturer knew it would become subject to the state's Section 177 Program without the option of complying with National LEV as an alternative.

Today's interpretation of section 177 applies only in the unique situation presented by National LEV—where states and manufacturers are both voluntarily opting into the national program. It does not necessarily provide any guidance for other circumstances.

VII. National LEV Will Produce Creditable Emissions Reductions Because It Is Enforceable

In the Final Framework Rule, EPA noted that National LEV must be an enforceable program to grant states credits for SIP purposes for emission reductions from National LEV vehicles. As discussed in the Final Framework Rule, there are two aspects to ensuring that National LEV is enforceable. *See* 62 FR 31225 (June 6, 1997). First, the National LEV program emissions standards and requirements must be enforceable against those manufacturers that have opted into the program and are operating under its provisions. In the Final Framework Rule, EPA found that the National LEV program meets this aspect of enforceability. Second, the National LEV program itself must be sufficiently stable to make it likely to achieve the expected emissions reductions. To achieve the expected emissions reductions from National LEV, the offramps must not be triggered and the program must remain in effect for its expected lifetime. EPA also found in the Final Framework Rule that the program elements finalized in that rule would contribute to a stable National LEV program. In today's notice, EPA finds that the complete National LEV program as contained in today's Final Rule and the Final Framework Rule will be sufficiently stable to make the program enforceable and hence creditable for SIP purposes.

The only circumstances that would allow the National LEV program to terminate prematurely would be an OTC State's failure to meet the commitments it makes regarding adoption of motor vehicle programs under section 177 of the Act, certain EPA changes to Stable Standards, an EPA determination that National LEV would no longer produce emission reductions equivalent to or greater than OTC State Section 177 Programs, or certain EPA actions or inactions related to in-use fuels.[46] The Final Framework Rule described the basis for EPA's belief that the Agency is unlikely to change any of the Stable Standards in a manner that would give the auto manufacturers the right to opt out of National LEV.[47] Here EPA finds that National LEV is stable because EPA believes that an OTC State is unlikely to fail to meet its commitments to National LEV, National LEV is likely to continue to produce equivalent (or better) emission reductions than OTC State Section 177 Programs, and EPA is unlikely to act in a manner that would allow manufacturers to opt out based on the proposed offramps related to in-use fuels.

A. OTC States Will Keep Their Commitments to National LEV

As discussed above, there are four ways in which an OTC State could violate its commitments to National LEV and allow the manufacturers to opt out

[46] OTC States could also opt out if a manufacturer opted out, and manufacturers could opt out if either another manufacturer or an OTC State opted out. Yet for purposes of evaluating the stability of the National LEV program, EPA need not consider these secondary opt-out opportunities because they would only arise if an OTC State or EPA had already triggered another offramp.

[47] The list of Non-Core Stable Standards which previously referenced the federal Tier 1 Supplemental Federal Test Procedures (SFTP) requirements has been updated to reflect the SFTP provisions in today's rule. This does not affect EPA's rationale for finding the National LEV program stable, as discussed in the Final Framework Rule.

Due to the change in the duration of the auto's commitment (discussed in section V.A. above), EPA has reworded 40 CFR 86.1705(d)(10). The wording changes do not change the intent of the provision, however, which is to clarify that EPA's promulgation of Tier 2 standards effective in MY2004 or later does not allow manufacturers to opt out of National LEV.

of the program: (1) Attempt to have a state Section 177 Program (including ZEV mandates, except in states with existing ZEV mandates) that was in effect and that did not allow National LEV as a compliance alternative for the duration of the state's commitment to National LEV; (2) in states without existing ZEV mandates, adopt a backstop ZEV mandate that would come into effect before the end of the state's commitment to National LEV, even if the state allows National LEV as a compliance alternative to the ZEV mandate for the duration of the state's commitment to National LEV; (3) fail to submit a National LEV SIP revision to EPA by the specified date; or (4) fail to submit an adequate National LEV SIP revision. EPA is confident that the OTC States will keep all of their commitments to National LEV for the duration of the program. The OTC States' practical ability to meet their commitments, the fact that the OTC States would have made commitments to the program through both practically binding instruments and legally binding instruments, and the effects of a violation of their commitments, all combine to support a finding that the states are unlikely to trigger an offramp for manufacturers.

First, the OTC States should have no practical difficulty carrying out their commitments. After the OTC States have opted into National LEV and the program has come into effect, the states will need to adopt regulations (or modify existing regulations) to commit to accept National LEV as a compliance alternative for the specified duration and to submit those regulations to EPA as a SIP revision within one year (or for a few states, eighteen months) of the date of EPA's finding that National LEV is in effect. Based on discussions with each of the OTC States on the time needed to complete a rulemaking in that state and the absence of any comments to the contrary, EPA believes that these are realistic deadlines for state action, which would provide sufficient time for the states to complete their regulatory processes and submit their SIP revisions. (See docket no. A–95–26 for memo on these discussions.) See the SNPRM (60 FR 44754 at 44775) for further discussion of how the timing and political significance of the initial opt-ins enhances the likelihood that the states will submit their SIP revisions in a timely manner.

Once EPA has approved a National LEV SIP revision, the state will be legally bound to uphold its commitment. As discussed above in section V.C.4, an approved SIP provision committing a state to accept National LEV as a compliance alternative to a state Section 177 Program or ZEV mandate would preempt a conflicting state law that required manufacturers to comply with a state Section 177 Program or ZEV mandate without allowing National LEV as a compliance alternative. Until EPA approved a subsequent SIP revision, manufacturers could enforce the initial SIP commitment in federal court. Furthermore, EPA would be obligated to disapprove a subsequent SIP revision that violated a state's commitment to allow National LEV as a compliance alternative for the specified period if it would interfere with other states' ability to attain the NAAQS. Other states are likely to have reasonably relied upon the emissions reductions from National LEV for attainment and maintenance, and the effect of approving the new SIP revision would very likely be to deprive the states of those reductions.

For states without existing ZEV mandates, the statement of intent not to adopt a backstop ZEV mandate effective during the period of the state's commitment to National LEV need not be incorporated as a legally enforceable element of the state's SIP revision. However, there are still strong practical disincentives for a state to adopt such a provision, as it would allow the manufacturers to opt out of National LEV with all of the negative environmental consequences that doing so would entail, as discussed below. In addition, OTC States would have very little incentive to adopt a backstop ZEV mandate effective during the period of the state's commitment to National LEV because such a backstop would offer a state very little protection against a manufacturer's opt-out from National LEV. A backstop state Section 177 Program, which would require compliance with the fleet average NMOG provisions of the CAL LEV program, would apply to any manufacturer that had opted out of National LEV immediately upon such a manufacturer's opt-out becoming effective. Thus, adoption of a backstop state Section 177 Program at least two years prior to the effective date of a manufacturer's opt-out would allow the program to apply as soon as the manufacturer was no longer subject to the National LEV requirements, without the state providing an additional two years of lead time. However, in their commitments to National LEV, OTC States would commit to, and section 177 would require, that they provide manufacturers at least two years of lead time from the date of the manufacturer's opt-out prior to any ZEV mandate becoming effective, regardless of the effective date of the manufacturer's opt-out. Thus, the only potential benefit from adoption of a backstop ZEV mandate effective during the period of the state's commitment to National LEV would be to avoid the additional delay in the applicability of the mandate that would be caused by the time required for adoption, but not to avoid the delay caused by providing the required lead time. Given that the state commitments to National LEV extend until MY2006 at the latest, it is highly unlikely that a manufacturer would opt out of National LEV within a timeframe in which such a delay could have any effect. With virtually no benefit to be gained from such an action, combined with the fact that it would allow manufacturers to opt out of National LEV, EPA believes it is highly unlikely that any state without an existing ZEV mandate would adopt a backstop ZEV mandate effective during the period of the state's commitment to National LEV.

Even if the state were not bound to its commitment legally, the practical effects of not meeting its commitment provide an independent basis for finding that National LEV is stable. The structure of the opt-out provisions establishes substantial disincentives for OTC States to violate their commitments, given the requirements that would apply to vehicles sold in the violating state, the opportunity it would provide for manufacturers to opt out of National LEV, and the consequences of such an opt-out. As discussed in detail above in section VI.A.1, for an OTC State that has violated its commitment by attempting to have a state Section 177 Program that does not allow National LEV as a compliance alternative, the consequences in that violating state would be that under National LEV all manufacturers would be able to comply with Tier 1 tailpipe standards and not count those vehicles in the fleet NMOG average. Thus, as provided in 40 CFR 86.1707(e)(2), the violating state would receive SIP credits based on this reduced compliance obligation. Similarly, if a state failed to submit its SIP revision committing to National LEV, submitted an inadequate SIP revision, or adopted a backstop ZEV mandate effective during the period of the state's commitment to National LEV, the same reduced tailpipe standard requirements would apply in the violating state for any manufacturer that opted out of National LEV until the manufacturer's opt-out became effective. Thus, the violating state would (or is likely to, depending upon the type of violation) receive higher emitting vehicles and commensurately fewer SIP credits. (See section VI.A above for a discussion of timing of requirements applicable to manufacturers under various options.)

In addition, states will be further discouraged from violating their commitments because a state violation would give manufacturers the opportunity and reason to opt out of National LEV, and manufacturer opt-outs would hurt air quality in all states. If National LEV is in effect, a substantial number of the OTC States and probably all of the 37 States are unlikely to have backstop Section 177 Programs in place. States without backstop Section 177 Programs would not be able to implement a state Section 177 Program for over two years because of the time needed to adopt a program and the two years of lead time required under section 177. During this period, manufacturers that had opted out of National LEV would have to comply only with federal Tier 1 standards for sales of new motor vehicles in those states without backstop programs. Also, sales of these Tier 1 vehicles would further increase vehicle emissions in both the violating state and states with backstop Section 177 Programs as well, through migration of dirtier Tier 1 vehicles and transport of air pollution from states receiving Tier 1 vehicles.

EPA is confident that the combination of the feasibility of compliance with the OTC State commitments, the practical and legal constraints on a state breaking its commitment, and the environmental and SIP-related consequences of a state breaking its commitment make it highly unlikely that an OTC State that has opted into National LEV will violate any of its commitments to the program.

B. It Is Unlikely That National LEV Would Be Found Not To Produce Emission Reductions Equivalent to OTC State Section 177 Programs

As discussed in section VI.D.2 above, today's Final Rule allows OTC States to request that EPA do a periodic equivalency finding to determine whether modifications to EPA new motor vehicle regulations (or their implementation, to the extent that is reflected in the modeling) will reverse EPA's finding that National LEV is equivalent to (or better than) OTC State Section 177 Programs. EPA believes it is unlikely to change the result of its equivalency determination as a result of the periodic determinations. The primary, and perhaps only, possible circumstance that could cause a change in the equivalency finding would be EPA modifying a new motor vehicle regulation in a way that makes it significantly less stringent.[48] It is highly unlikely that this would occur. Given the greater emissions reductions that would be produced by National LEV compared to the alternative of OTC State Section 177 Programs (discussed above in section IV), only a significant weakening of an EPA regulation would be likely to change EPA's determination that National LEV would produce emissions reductions at least equivalent to the alternative. Such a weakening of an EPA new motor vehicle regulation would be contrary to EPA's mission of environmental protection and would jeopardize the National LEV program, which the Agency strongly supports. EPA has invested significant resources in facilitating the negotiations between the parties and developing the regulatory framework for the National LEV program, and the Agency would not lightly jeopardize the results of this effort. The discussion in the SNPRM as to why EPA would not make a Stable Standard less stringent in a way that would change the equivalency determination applies to changes to all new motor vehicle standards. *See* Section VII.B of the SNPRM, 62 FR 44776.

C. EPA Is Unlikely To Fail To Consider In-Use Fuels Issues Upon a Manufacturer's Request

EPA also believes that the Agency is unlikely to act or fail to act in a manner that would allow the manufacturers to opt out of National LEV based on the offramp related to in-use fuels. As discussed above, today's Final Rule provides autos with an offramp if EPA fails to consider certain manufacturer requests regarding the potential effects of fuel sulfur levels on the emission performance of National LEV vehicles.

Given the nature of the offramp, EPA believes it is highly unlikely that it would ever be triggered. This offramp does not guarantee manufacturers any particular substantive outcome to their requests, nor does it provide manufacturers any additional rights (beyond what rights, if any, are provided otherwise under the Clean Air Act and the Administrative Procedure Act) to a particular substantive outcome or to have the substantive outcome reviewed by a court. Rather, this offramp formalizes the process EPA previously committed to follow in addressing potential problems related to the higher sulfur levels in fuel supplied nationally (including in the OTC States) than in California. If ongoing additional investigations indicate problems that need to be addressed, EPA will need to reassess the fuel sulfur issue in both the National LEV context and other EPA motor vehicle emission control programs, as discussed above in section VI.C. Given EPA's recognition of the manufacturers' concerns and the ongoing process for resolving them outside of the National LEV context, EPA believes it is highly unlikely that the Agency would fail to respond to a manufacturer's request to address any problems that are identified or decline to consider any reasonable solutions. In addition, EPA would have all the same incentives here to avoid taking any action that would jeopardize the benefits from the National LEV program, as discussed above for changes to new motor vehicle requirements that could result in a change to the equivalency finding.

[48] The OTC States have suggested that changes in implementation of EPA new motor vehicle regulations might also affect the equivalency determination. EPA is not aware that the model reflects this type of implementation of EPA regulations.

VIII. Additional Provisions

A. Early Reduction Credits for Northeast Trading Region

As was proposed, under today's rule manufacturers may generate early reduction credits for sales of vehicles in the Northeast Trading Region (NTR) in MY1997 and MY1998, prior to the start of National LEV in MY1999. 40 CFR 86.1710(c)(8). No commenters opposed early reduction credits. The ability to generate these credits will provide manufacturers added flexibility as well as create an incentive for them to introduce cleaner vehicles into this region before MY1999, thus providing air quality benefits sooner.

Today's rule takes the same approach to these early reduction credits in the NTR as the Final Framework Rule took to the early reduction credits earned in the 37 States before MY2001.40 CFR 86.1710(c)(7). Since the credits cannot be used or traded before MY1999, EPA is proposing to treat any credits earned in the NTR before MY1999 as if earned in MY1999 for annual discounting purposes. This is consistent with EPA's approach to early reduction credits in the 37 States and with California's approach to allowing early generation of credits. These credits will be subject to the normal discount rate starting with MY1999, meaning they will retain their full value for MY2000 and will be discounted from then on. In addition, consistent with the approach to early reduction credits in the 37 States, early reduction credits in the NTR will be subject to a one-time ten percent discount applied in MY1999, as discussed below.

Manufacturers will be able to generate early reduction credits in the NTR by supplying vehicles with lower emissions than otherwise required during this time period in any OTC State that is in National LEV for MY1999 and later. Specifically, manufacturers would be able to generate credits for sales of TLEVs, LEVs, ULEVs and ZEVs sold in the OTR outside New York and Massachusetts in MY1997, and outside of New York, Massachusetts and Connecticut in MY1998, to the extent that such vehicles can be sold under EPA's cross-border sales policy.[49] Additionally, manufacturers could generate credits for sales of vehicles achieving a lower fleet average NMOG value than required under the state Section 177 Programs in New York and Massachusetts in MY1997, and in New York, Massachusetts and Connecticut in MY1998, assuming that those states commit to National LEV for MY1999 and later. Manufacturers would not be able to take credit for vehicles sold to meet the applicable NMOG averages in New York, Massachusetts and Connecticut in MY1997 and MY1998, as that would be using vehicles required independent of National LEV to reduce the stringency of the National LEV requirements, and hence would be ''double-counting.''

EPA believes that there are substantial benefits to early introductions of cleaner vehicles. However, the Final Framework Rule included a discount for early reduction credits in the 37 States in part to address a concern that giving full, undiscounted credits for all early reductions may generate some windfall credits. See 62 FR 31214–31215. ''Windfall'' credits are credits given for emission reductions the manufacturer would have made even in the absence of an early credit program. The purpose of giving credits for early reductions is to encourage manufacturers to make reductions that they would not have made but for the credit program. Because credits can be used to offset higher emissions in later years, if manufacturers are given credits for early reductions they would have made even without a credit program, an early credit provision could decrease the environmental benefits of the program.

Although EPA took comment on the potential for windfall credits in the NTR and in the 37 State region and whether ten percent is an appropriate discount factor for each region, EPA decided that circumstances had not changed since the Final Framework Rule in a way that would justify reducing the discount factor below 10%. To the contrary, Honda's introduction nationally of LEV technology vehicles (albeit certified to Tier 1 levels) confirmed that National LEV and the ability to earn early reduction credits are not the only reasons manufacturers would move to cleaner vehicle technology.

B. Calculation of Compliance with Fleet Average NMOG Standards

Today's final rule contains provisions for the calculation of compliance with the National LEV fleet NMOG average in the event that fewer than 49 states are participating in the program. These provisions are necessary even though EPA continues to believe that National LEV should be a 49-state program and the auto manufacturers have repeatedly stated that all thirteen OTC States must opt in for National LEV to come into effect. If the auto manufacturers and the relevant OTC States are interested in National LEV proceeding even with less than 49 states participating, EPA would want National LEV to proceed. Additionally, after the program is found in effect, it is possible that National LEV would continue even if one or more OTC States opt out at a future time. Therefore, National LEV requirements must provide for the possibility of having less than 49 states in the program, which will necessitate changes in the Final Framework Rule's provisions for determining compliance with the fleet average NMOG standards.

In the SNPRM, EPA proposed to modify the Final Framework Rule so that the fleet average NMOG calculation would not include vehicle sales in any OTC State that legitimately opts out once that opt-out becomes effective.[50] This would help ensure that states that opt into National LEV will receive the anticipated emissions benefits as long as they and the auto manufacturers participate in National LEV. The opposite approach (i.e., including all vehicle sales in any OTC States that are not participating in National LEV) would concentrate cleaner cars in those OTC States with state Section 177 Programs at the expense (environmentally) of OTC States committed to National LEV. EPA is finalizing the program to have manufacturers not include vehicles sold in a state that opts out of the program in their fleet average NMOG compliance calculations for the Northeast Trading Region (NTR) or All States Trading Region (ASTR). This action provides the maximum emission benefits to the states participating in the National LEV program. Additionally, vehicles sold in an OTC State that was not participating in National LEV will be included in the fleet average NMOG compliance calculations for that state, and it would be inequitable to count those vehicles in compliance calculations for the National LEV program as well.

EPA also took comment on whether to count in a manufacturer's fleet average NMOG calculation those California-certified vehicles that are sold under EPA's Cross Border Sales (CBS) policy in states that are participating in National LEV. A National LEV program consisting of less than all of the OTC States would necessitate the continuation of EPA's CBS policy for those manufacturers producing vehicles certified separately to Federal and California standards. This policy allows manufacturers to introduce into commerce California-certified vehicles in states that are contiguous to California or other states that have adopted the Section 177 Program. The policy was designed to alleviate the burden on dealerships located in border regions of states with a Section 177 Program from having to stock, service, and sell two types of vehicles: those meeting the California emission requirements and those meeting the Federal emission requirements. If a state were not participating in National LEV and instead had a Section 177 Program in effect, under the CBS policy manufacturers would be allowed to sell California-certified vehicles in National LEV states bordering the non-participating state. The necessity of continuing the Cross-Border Sales policy raises the issue of how to count such California-certified vehicles sold in those contiguous states in calculating the manufacturer's compliance with its National LEV fleet average NMOG requirement.

EPA has decided to allow manufacturers to include all National LEV vehicles and California-certified vehicles sold in the NTR in MY1999 and MY2000 (including California Tier 1 vehicles) in their fleet average NMOG compliance calculations for the NTR in MY1999 and MY200 (except for any vehicles sold in an OTC State that has not opted in or that otherwise has its own Section 177 Program). If all these

[49] See docket no. A–95–26, IV–A–03 for EPA's cross border sales policy. The current cross border sales policy allows sales of vehicles certified to California's emission standards in states contiguous to, or within 50 miles of, California and states that have a program adopted under section 177 in place. Thus, in the OTR for MY1997 and MY1998, manufacturers are allowed to sell California vehicles in Maine, New Hampshire, Vermont, Massachusetts, New York, Rhode Island, New Jersey, Pennsylvania, and Connecticut.

[50] EPA's treatment of vehicle sales in OTC States that break their commitments is addressed in the regulatory provisions and preamble discussion of manufacturer and OTC State offramps. *See* section VI above and 40 CFR 86.1707.

California-certified vehicles were not included in the compliance calculation, a manufacturer could detrimentally affect its compliance with the fleet average NMOG standards in the NTR by selling higher-emitting California-certified vehicles, which would not be included in its NTR compliance calculation nor in any calculation done to show compliance with a state Section 177 Program. These vehicles would decrease the size of the manufacturer's fleet in the NTR and allow the manufacturer to demonstrate compliance with applicable fleet average NMOG standards using a smaller fleet size than was actually sold in the NTR.

EPA has also decided to allow manufacturers to count only vehicles certified to federal standards in the fleet average NMOG calculation for MY2001 and later. No California-certified vehicles sold in National LEV states will count in a manufacturer's fleet average NMOG compliance calculation after MY2000. Given the nationwide trading region that will go into effect in MY2001, it becomes much more difficult for a manufacturer to artificially decrease the size of its National LEV fleet and thereby artificially inflate its NLEV NMOG fleet average through sales of California-certified vehicles. The much larger number of vehicles included in the ASTR means that any sales of California vehicles in the NTR under the CBS policy will not have a generally noticeable effect on the calculated fleet averages in the ASTR. California-certified vehicles sold in the NTR after MY2000 will also likely be LEVs and ULEVs, as discussed in sections IX and VIII.E, so there is even less likelihood of a detrimental environmental impact from the sale of California-certified vehicles in the NTR. The auto manufacturers' comments supported not including California-certified vehicles in their fleet average NMOG compliance calculations after MY2000.

C. Certification of Tier 1 Vehicles in a Violating State

If an OTC State violates its commitment to National LEV, in some instances manufacturers will have the option of supplying vehicles meeting only the Tier 1 emission standards in the violating state. To exercise this option, manufacturers could sell different vehicles (i.e., Tier 1 vehicles) to the violating OTC State than they are selling to the other states (i.e., TLEVs, LEVs, ULEVs and ZEVs). Alternatively, manufacturers could sell the same vehicles to all states, but have a label that indicates that vehicles sold in the violating OTC State are only certified to Tier 1 levels. Such vehicles sold in the violating OTC State would have Tier 1 tailpipe standards for their compliance levels (which would govern recall and warranty actions and SIP credits), but would have TLEV, LEV, ULEV or ZEV tailpipe standards for their compliance levels when sold in other states covered by the National LEV program.

It is possible that a manufacturer could begin vehicle certification for a given model year before learning that it is only required to sell Tier 1 vehicles in a given state. In such a situation, EPA will allow a manufacturer to change the compliance levels of its vehicles sold in a violating OTC State through the submission of running changes to EPA. A running change is a mechanism manufacturers use to obtain approval from EPA for modifications or additions to vehicles or engines that have already been certified by EPA but are still in production. By allowing a manufacturer to change the compliance levels of its vehicles through a running change that applies only to vehicles sold in a violating OTC State, manufacturers will have a procedure to respond in a timely fashion to a state breaking its commitment, which will provide a real disincentive for an OTC State to break its commitment.

Manufacturers currently use running changes in the federal certification process to obtain EPA approval of a change in a specified vehicle configuration or an addition of a vehicle or engine to an approved engine family that is still in production.[51] A manufacturer may notify the Administrator in advance of or concurrent with making the addition or change. The manufacturer must demonstrate to EPA that all vehicles or engines affected by the change will continue to meet the applicable emission standards. This demonstration can be based on an engineering evaluation and testing if the manufacturer determines such testing is necessary. The Administrator may require that additional emission testing be performed if the manufacturer's determination is not supported by the data included in its running change application. EPA may disapprove a running change request, which could then require manufacturers to remedy vehicles or engines produced under the request.

EPA will exercise its current authority to allow manufacturers to use a running change to modify quickly the compliance level of their National LEV vehicles to Tier 1 tailpipe standards when the National LEV regulations set the only applicable tailpipe standards at Tier 1 levels in a particular state. Such running changes will reflect only the change in emission standards the vehicles are required to meet. After such running change has been made, vehicles sold in a state for which Tier 1 standards are applicable will be treated as Tier 1 vehicles for purposes of federal enforcement requirements and warranty limits and would not count in the manufacturers' NMOG fleet average.

If a manufacturer wished to sell vehicles with Tier 1 compliance levels in a violating OTC State and more stringent compliance levels in other states, it would be required to modify its certification application to reflect the change and install a modified Vehicle Emission Control Information (VECI) label. The label would state that the vehicle complies with TLEV, LEV, ULEV or ZEV standards (whichever is applicable), but if such vehicle is sold in the specified violating OTC State, such vehicle is certified to Tier 1 tailpipe standards. The modified VECI label will highlight the distinction in vehicle compliance levels to consumers and the general public.[52] EPA believes that running changes for this particular situation may be allowed by applying good engineering judgment, rather than additional emission testing, since a vehicle certified to National LEV TLEV, LEV, ULEV, or ZEV standards should also meet Federal Tier 1 standards. In the instance where an engineering evaluation is judged to be insufficient to support a change, EPA will require additional data.

Vehicles complying only with Tier 1 tailpipe standards and sold in an OTC State that has violated its National LEV commitment will be treated as Tier 1 vehicles in that state for purposes of demonstrating compliance with federal requirements and SIP credits. These vehicles will be held only to the Tier 1 tailpipe standards for purposes of recall liability in that state. For example, a National LEV vehicle certified to LEV standards but sold as a Tier 1 vehicle in a violating state would not be subject to recall action in the violating state if the

[51] See 40 CFR 86.079–32, 86.079–33, and 86.082–34.

[52] Such a running change would not have a retroactive effect. Any vehicle sold as a TLEV, LEV, ULEV or ZEV (i.e., any vehicle without a label that said Tier 1 was the applicable standard for sales in the relevant state at the time of the sale) would still be subject to warranty and recall for the tailpipe standards applicable to that category. EPA believes it would be unacceptable for a consumer who purchases a LEV that, at the time of sale in that state, is being sold as a vehicle certified to LEV standards for that state to find out later that the vehicle has mysteriously been converted to a Tier 1 vehicle.

problem causing the recall did not cause the vehicle to exceed the Tier 1 standards.[53]

D. Provisions Relating to Changes to Stable Standards

The Final Framework Rule provided that, with certain exceptions, manufacturers would be able to opt out of National LEV if EPA changed a motor vehicle requirement that it had designated a ''Stable Standard.'' The Stable Standards are divided into two categories: Core Stable Standards and Non-Core Stable Standards. Core Stable Standards generally are the National LEV standards that EPA could not impose absent the consent of the manufacturers. Non-Core Stable Standards generally are other federal motor vehicle standards that EPA does not anticipate changing for the duration of National LEV. For both Core and Non-Core Stable Standards, EPA can make changes to which manufacturers do not object. For Non-Core Stable Standards, EPA can also make changes that do not increase the stringency of the standard or that harmonize the standard with the comparable California standard. EPA can make other changes to any of the Stable Standards, but such changes would allow the manufacturers to opt out of National LEV. See the Final Framework Rule for more detail on the specific Stable Standards and the offramp for manufacturers associated with changes to the Stable Standards (62 FR 31202–31207).

As proposed in the SNPRM, EPA is making a few minor changes to the provisions for opt-outs based on a change to a Stable Standard. *See* 40 CFR 86.1707(d). Under the Final Framework Rule, EPA had an opportunity to prevent an opt-out based on a change to a Stable Standard from coming into effect by withdrawing the change to the Stable Standard before the effective date of the opt-out. To give EPA sufficient time to withdraw the change and prevent the opt-out, under the Final Framework Rule, such an opt-out could not become effective until the model year named for the second calendar year following the calendar year in which the manufacturer opted out.

As proposed in the SNPRM, this Final Rule deletes the provisions that allowed the Agency the ability to prevent an opt-out by withdrawing a change that had allowed manufacturers to opt out. Today's rule also sets the earliest effective date of an opt-out based on a change to a Core Stable Standard to be the same as the earliest effective date of an opt-out based on a violation of an OTC State commitment to National LEV. Thus, an opt-out based on an EPA change to a Core Stable Standard or an OTC State violation of its commitment to National LEV could become effective beginning in the ''next model year'' after the manufacturer opts out.[54] See section VI.A above for further discussion of the effective date of opt-outs based on an OTC State violation of its commitment to National LEV.

EPA does not believe that this change will adversely affect the stability of the National LEV program. For the reasons discussed in the SNPRM (60 FR 44776), EPA is highly unlikely to make any change to a Stable Standard that may allow the manufacturers to opt out. EPA received no comments opposing this proposed change. See the SNPRM section VIII.D for additional discussion of the reasons why EPA believes this change is appropriate.

In the Final Framework Rule, EPA stated that, if a manufacturer were to take an offramp because EPA changed a Stable Standard, the applicable state or federal standards would apply. At that time, EPA did not discuss in detail the timing for when state or federal standards would apply. As proposed in the SNPRM (60 FR 44779), today's rule provides that, if a manufacturer validly opted out of National LEV based on an EPA change to a Stable Standard, once the manufacturer's opt-out was effective, the manufacturer's obligations would be determined in the same manner as if the manufacturer had opted out because an OTC State failed to submit its National LEV SIP revision on time (except that no state could be treated as a violating state). As of the effective date of its opt-out, the manufacturer would be subject to any backstop Section 177 Programs for which the two-year lead time requirement of section 177 had been met (running from the date the state adopted the backstop program), and would be subject to Tier 1 requirements in states without such programs. Manufacturers would be subject to backstop ZEV mandates for model years (as defined in Part 85, Subpart X) commencing two years after the date of EPA's receipt of the opt-out notification. To the extent that these regulations would provide a manufacturer with less than the two-year lead time set forth in section 177, the manufacturer waives that protection by opting into National LEV and then setting an effective date in its opt-out notification that provides for less than two-years lead time. To the extent these regulations would provide a manufacturer with more time than required by section 177, by opting into National LEV the OTC States commit to provide the lead time set forth in the National LEV regulations.

E. Nationwide Trading Region

The National LEV program, as set forth in the Final Framework Rule, required manufacturers to determine compliance with the fleet average NMOG standards for the two classes of National LEV vehicles in two separate trading regions: the OTC States and the 37 States making up the rest of the country (except California). In the SNPRM, EPA proposed to remove the requirement for two trading regions for MY2001 and later model years and instead establish a nationwide trading region. EPA cited the elimination of the legal requirement for National LEV to provide equivalent emission reductions to the OTC LEV program and the change in program start dates for both National LEV and OTC State Section 177 Programs as the major reasons for it to reconsider the necessity of separate trading regions. *See* 62 FR 44779–80. In today's rule in 40 CFR 86.1710, EPA is establishing a nationwide trading region which manufacturers will use to demonstrate compliance with National LEV standards in MY2001 and later.

It is important that the emissions reductions expected from National LEV in the OTR are actually achieved. Various aspects of the program, such as the periodic equivalency determination and the separate trading regions, were designed to ensure the expected quantity of emission reductions in the OTR. However, EPA believes that a nationwide trading region will not detrimentally affect the environmental benefits of National LEV in the OTR. EPA has received no data showing significantly different vehicle model sales in different regions of the country

[53] EPA is considering making significant changes to its existing federal compliance program, currently targeted to begin with MY2000 (these changes are referred to as CAP 2000, or Compliance Assurance Program 2000). While CAP 2000 is still pre-proposal, EPA has established a docket (A–96–50), which contains information on the concepts currently being considered. Once promulgated, CAP 2000 may have some potential ramifications for quickly changing certification designations for National LEV vehicles sold in an OTC State that had violated its National LEV commitment. In particular, EPA is considering significantly streamlining its current certification program and requiring manufacturers to perform an in-use verification testing program to demonstrate that the streamlined certification procedures are capable of predicting in-use compliance. This program would apply to all federally certified vehicles, including Tier 1 vehicles. Thus, CAP 2000 could also possibly apply to any National LEV vehicles that were only required to comply with Tier 1 tailpipe standards under the proposal outlined above.

[54] The ''next model year'' is the model year named for the calendar year following the calendar year in which EPA received the opt-out notification. For example, if EPA received the opt-out in 2000, the ''next model year'' would be MY2001.

and has no reason to expect that manufacturers' compliance with a nationwide trading region will lead to greater numbers of higher-emitting vehicles in the OTR.

Even if vehicle model sales levels were significantly different in various regions of the country, a discrepancy between the emissions produced by the fleets sold in the OTR and outside the OTR would only be possible if a manufacturer's fleet was made up of a number of engine families certified to Tier 1, TLEV, and LEV standards. After MY2000, a manufacturer's fleet would have to include Tier 1 vehicles and TLEVs, as well as LEVs and ULEVs, for there to be even a possibility of introducing a greater percentage of dirtier vehicles in the OTR than in the rest of the country. As noted in the SNPRM, EPA does not believe significant numbers of Tier 1 vehicles and TLEVs will be sold in the OTR after MY2000, since other provisions of the National LEV program will act to reduce the incentive to sell substantial numbers of such vehicles at that time.

Two factors support EPA's belief that the OTC States participating in the National LEV program will receive vehicles with the same level of emissions control under a nationwide trading region as would be expected if the program retained two trading regions. First, beginning in MY2001, National LEV regulations prohibit manufacturers from offering for sale any Tier 1 vehicles and TLEVs in the NTR unless the same engine families are certified and offered for sale in California in the same model year. *See* 62 FR 31218 (June 6, 1997); 40 CFR 86.1711.[55] California's more stringent fleet average NMOG standard and SFTP phase-in requirements, as described in section IX, will act to limit the number of Tier 1 and TLEV engine families certified and sold in California, and, therefore, the number sold in the NTR. Second, even though the National LEV fleet average NMOG standard is not as stringent as California's, the 0.075 g/mi and 0.100 g/mi standards applicable under National LEV for MY2001 and later will make it difficult for manufacturers to include substantial numbers of Tier 1 vehicles and TLEVs in their fleet and still comply with the fleet average NMOG standard. Each Tier 1 vehicle or TLEV sold by a manufacturer would have to be offset by more than one ULEV vehicle in order for that manufacturer to remain in compliance with the applicable fleet average NMOG standards. Therefore, EPA believes there are strong incentives for manufacturers to limit or even eliminate the production and sale of Tier 1 vehicles and TLEVs in the NTR in MY2001 and later, which would result in a nationwide vehicle fleet of essentially LEVs. This result is not dependent on having a separate trading region in the OTR.

A nationwide trading region will also reduce manufacturers' and EPA's administrative burden in demonstrating and assessing compliance with the National LEV fleet average NMOG standards. Compliance under one nationwide trading region rather than two separate regions for MY2001 and later model years will reduce the manufacturers' compliance burden by eliminating the need specifically to track and report vehicle sales in two separate regions and maintain two separate tallies of credits and debits specific to the two regions. A single trading region will also reduce EPA's administrative burden in determining whether manufacturers are complying with the applicable fleet average NMOG standards. Given a nationwide fleet that is all or almost all LEVs, a separate trading region for the OTR will not have any significant air quality benefit and will add additional unnecessary complexity to the National LEV program. Moreover, even separate trading regions would not have required manufacturers to demonstrate program compliance on an OTC state-by-state basis, but would instead have only required compliance demonstrations based on regionwide sales. Separate trading regions would thus have been of limited value to OTC States wishing to use National LEV program vehicle tracking requirements to check on the different types of vehicles sold within individual states.

Under today's rule, National LEV retains the NTR, which would apply for MY1999–2000 and cover vehicles sold in the OTC States. The second region would be the All States Trading Region (ASTR), which will include all states in National LEV except for California, and apply for 2001 and later model years. Manufacturers will demonstrate compliance with the fleet average NMOG standards in these two regions under the provisions set forth in today's rule and the Final Framework Rule. EPA is eliminating the 37 State trading region that was finalized in the Final Framework Rule.

Manufacturers can generate early reduction credits in the states outside the NTR before MY2001 to apply to compliance in the ASTR from MY2001 on. Manufacturers could also use credits generated in the NTR for demonstrating compliance in the ASTR from MY2001 on at the same value as if the manufacturer had used them in the NTR under the Final Framework Rule. However, a manufacturer could not apply early reduction credits generated outside the NTR to offset any debits generated in the NTR before MY2001. Using credits generated outside the NTR to offset debits generated in the NTR during MY1999 and MY2000 would decrease the environmental benefits that should accrue in the NTR.

Shifting from the NTR in MY2000 to the ASTR in MY2001 does raise special transition issues for manufacturers that end MY2000 with debits in the NTR. (If a manufacturer ends MY2000 with credits in the NTR, these credits would be subject to the usual discounting (rather than to the special provisions for early reduction credits) and then could be applied either in the ASTR or the NTR. Section 86.1710(d)(2) specifically addresses this situation. If a manufacturer ends MY2000 with debits in the NTR, it can make up those debits only with NTR credits. This is necessary to ensure that the NTR gets the intended environmental benefits from starting the program in the NTR two years before it starts in the rest of the country. A manufacturer than ends MY2000 with debits in the NTR must calculate its fleet average NMOG value in the NTR for MY2001. If the manufacturer does not have any credits in the NTR in MY2001 (and it does not obtain NTR credits from another manufacturer), then it will be subject to an enforcement action for the MY2000 debits. If the manufacturer has credits in MY2001 in the NTR, these must be applied to offset its MY2000 NTR debits. If the MY2000 debits exceed the MY2001 credits, then the manufacturer would be subject to an enforcement action for the remaining MY2000 debits. In addition to calculating fleet average NMOG values for the NTR, the manufacturer must also calculate fleet average NMOG values for the ASTR. After calculating the level of debits or credits in the ASTR, the level must be adjusted by deducting all

[55] As stated in the SNPRM, manufacturers will not be required always to sell exactly the same engine families in both California and the NTR because in some instances, that would not be possible. In the specific case of Tier 1 engine families, National LEV maintains Federal Tier 1 standards while California has its own Tier 1 standards, so a manufacturer could not sell an identical California Tier 1 vehicle as a Federal Tier 1 vehicle in the NTR under the National LEV program. Therefore, for purposes of this provision, EPA will consider a National LEV Tier 1 or TLEV engine family the same as a California Tier 1 or TLEV engine family if the National LEV engine family has the same technology (hardware and software) as the comparable California engine family. A manufacturer could always certify a Tier 1 or TLEV engine family as a 50-state family and avoid this issue.

credits used to offset MY2000 debits in the NTR.

The National LEV program will allow a manufacturer to demonstrate compliance with the fleet average NMOG standards using actual production data in lieu of actual sales data if the manufacturer is demonstrating compliance with the fleet average NMOG standards in the ASTR. A manufacturer will need to petition EPA to allow production volume to be used in lieu of actual sales volume and would have to submit the petition to EPA within 30 days after the end of the model year. EPA will grant such a petition if the manufacturer establishes, to the satisfaction of the Administrator, that production volume is functionally equivalent to sales volume. Manufacturers will still have to keep sales data in the NTR to demonstrate compliance with the ban on the sale of Tier 1 and TLEV engine families in the NTR if such engine families are not certified for sale in California for the same model year, but such data would not be reported to EPA as part of a regular report. EPA has previously allowed manufacturers to use production volume in lieu of sales volume as part of the Tier 1 standards phase-in.

F. Elimination of Five-Percent Cap on Sales of Tier 1 Vehicles and TLEVs in the OTR

EPA's Final Framework Rule codified the OTC States' and manufacturers' recommendation that National LEV include provisions limiting the sale of Tier 1 vehicles and TLEVs in the NTR after MY2000. The first provision is that manufacturers may sell in the NTR Tier 1 vehicles and TLEVs only if the same or similar engine families are certified and offered for sale in California as Tier 1 vehicles and TLEVs. This provision is being retained in the National LEV program. The second provision is a five-percent cap on sales of Tier 1 vehicles and TLEVs in the NTR starting in MY2001, which allows all manufacturers to sell Tier 1 vehicles and TLEVs in the NTR to the extent permitted under the first limitation as long as the overall Tier 1 vehicle and TLEV fleet does not exceed five percent of the National LEV vehicles sold in the NTR. EPA proposed to delete the five-percent cap provision because of the change in the OTC States' legal obligation since this provision was proposed and because of the additional administrative burden it would entail if EPA were to adopt the proposal to have a single trading region starting in MY2001. Furthermore, EPA believes the five-percent cap would not provide any air quality benefit given the expected fleet make-up after MY2000 and the other limitation on sales of these vehicles in the NTR. *See* 62 FR 44781 (August 22, 1997).

EPA has decided to delete the five-percent cap provision from the National LEV program. The court reversal of the requirement that all OTC States adopt Section 177 Programs effective in MY1999 means there is no longer a legal requirement that EPA find that National LEV is equivalent to state Section 177 Programs throughout the OTR. Additionally, the expected benefits in the OTR of National LEV as compared to OTC State adopted Section 177 Programs has increased. Therefore, there is no legal need and less practical need for a five-percent cap to control NO_X emissions.

EPA also believes the five percent cap is not necessary because it expects manufacturers will not introduce significant numbers of Tier 1 vehicles and TLEVs after MY2000 in the national, let alone the Northeast, market. This means that National LEV will not have a NO_X penalty when compared to OTC State adopted Section 177 Programs. A National LEV fleet, made up primarily of LEV vehicles, will have similar effects on NO_X emissions when compared to a CAL LEV fleet consisting primarily of LEV and ULEV vehicles since both types of vehicles have the same NO_X emission standards. The provision limiting manufacturers' sale in the NTR of Tier 1 vehicles and TLEVs based on Calfornia certification also provides additional assurance. A staff report on SFTP revisions issued by the California Air Resources Board offers further support for EPA's decision to drop the five percent cap requirement. In this report, CARB states that their cost estimates assume that the entire California new motor vehicle fleet will be certified to LEV or more stringent standards by MY 2001, although they note that ''in actuality, staff estimates that something less than five percent of new motor vehicles will be certified to the Tier 1 and TLEV emission standards by the 2001 model year'' due to the stringency of the fleet average NMOG standard in California.[56] For all these reasons, EPA believes that any sales of Tier 1 vehicles and TLEVs in the NTR after MY2000 will make up less than five percent of the fleet in any instance, and does not believe having a separate requirement to ensure such sales limits is needed.

Finally, even if there were some benefit to the NTR from a five-percent cap, EPA believes the benefit would be so minimal that it would not justify the administrative burden given the single trading region that applies after MY2000. Requiring compliance demonstrations with the five-percent cap would negate any administrative savings associated with the All State Trading Region for 2001 and later model years and the provision allowing manufacturers to demonstrate compliance through production data. Moreover, retention of the five-percent cap would not provide any additional assurance that National LEV will continue to provide a quantity of emissions reductions at least equivalent to the quantity that would be provided by OTC State Section 177 Programs as demonstrated through EPA's periodic equivalency determination. The mobile source emissions model used in the original equivalency determination, including fleet make-up in the OTR, will be used as part of the equivalency determination, unless all parties agree to use an updated modeling methodology. Modifications made to the model in the course of a periodic equivalency determination would take into account changes in EPA's rules and regulations and implementation of such rules and regulations, not changes in the emissions inventory assumptions used in the original equivalency determination.

G. Technical Corrections to Final Framework Rule

The Agency is also making several minor technical corrections to the National LEV regulations issued in the Final Framework Rule. A June 24, 1997 letter from the American Automobile Manufacturers Association (AAMA) and Association of International Automobile Manufacturers (AIAM) (available in the public docket for review) suggests a number of technical corrections to the regulations EPA promulgated on June 6, 1997. The corrections detailed by AAMA/AIAM have been reviewed by EPA and incorporated in today's rule to the extent that they are necessary and appropriate. In addition, a number of changes must be made to reflect the start of the program in MY1999, rather than MY1997, which was used as a placeholder in the Final Framework Rule. These revisions are detailed in the Response to Comments document for today's Final Rule.

In the Final Framework Rule, EPA required manufacturers to track vehicles

[56] Staff Report: Public Hearing to Consider Adoption of New Certification Tests and Standards to Control Exhaust Emissions from Aggressive Driving and Air-Conditioner Usage for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles under 8501 Pounds Gross Vehicle Weight Rating. State of California, California Environmental Protection Agency, Air Resources Board, July, 1997.

to the ''point of first sale'' for purposes of determining compliance with fleet average NMOG standards (62 FR 31212, June 6, 1997). EPA defined ''point of first sale'' as ''the location where the completed LDV or LDT is purchased'' and it ''may be a retail customer, dealer, or secondary manufacturer.'' *See* 40 CFR 86.1702–97(b). EPA recognized that requiring manufacturers to always track vehicle sales to the ultimate purchaser would add an additional burden on manufacturers without having any significant effect on air quality.

Requiring manufacturers to track vehicles to the point of first sale was intended to impose similar requirements on manufacturers as those associated with EPA's Tier 1 standard phase-in compliance requirements found in 40 CFR 86.094–8 and 86.094–9. In the Tier 1 program, manufacturers could demonstrate compliance ''based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.'' *See* 40 CFR 86.094–8(a)(1)(i)(B)(*1*)(*i*). EPA believes the National LEV vehicle sales tracking requirements operate in the same manner as those found in the Tier 1 regulations, but the auto manufacturers have notified EPA of their concern that National LEV imposes different requirements. (Document available in docket A–95–26.)

To eliminate confusion about the required level of vehicle tracking necessary to demonstrate compliance with National LEV fleet average NMOG standards, today's final rule modifies the definition of ''point of first sale'' in the National LEV program such that it is equivalent to the ''point of first sale'' language found in the Tier 1 regulations. EPA did not intend to limit ''point of first sale'' entities to those specifically listed in the National LEV regulations. EPA also does not intend to limit a manufacturer to tracking vehicles only to the point of first sale if a manufacturer decides further tracking gives it a more accurate account of vehicle sales in the different trading regions or if a manufacturer's current vehicle tracking system is set up to track vehicles beyond the point of first sale. However, as noted in the Final Framework Rule, EPA does not believe this additional level of tracking vehicles is necessary.

H. Clarifications to Final Framework Rule

Based on comments and other letters submitted by the auto manufacturers, EPA believes that some provisions and discussions in the Final Framework Rule and preamble could cause confusion. Thus, EPA is taking the opportunity here to clarify a few issues addressed in the Final Framework Rule.

1. Operation of National LEV Vehicles on In-Use Fuels

In the Final Framework Rule EPA reiterated a set of three principles originally presented in the October 10, 1995 NPRM. These principles, agreed upon by representatives of the auto industry, some segments of the oil industry, and the OTC States, stated:

(1) Adoption of the National LEV program does not impose unique gasoline requirements on any state. Gasoline specified for use by any state will have the same effect on the National LEV program as on the OTC LEV program.

(2) Testing is needed to evaluate the effects of non-California gasoline on emissions control systems.

(3) If testing results show a significant effect, EPA will conduct a multi-party process to resolve the issue without adversely affecting SIP credits or actual emission reductions when compared to OTC LEV using fuels available in the OTR or imposing obligations on manufacturers different from the obligations they would have had under OTC LEV.

The Agency continues to hold to these principles, but at the request of some members of the auto industry EPA will clarify some related statements made in the Final Framework Rule. As noted in the Final Framework Rule, EPA anticipates that auto manufacturers will take advantage of the option to certify vehicles under the National LEV program using California Phase II reformulated gasoline (62 FR 31219, June 6, 1997). Consequently, vehicles will be designed by auto manufacturers to achieve the applicable emission standards using fuel meeting the California specifications. Under the National LEV Program, vehicles in actual use will be using the range of fuels commercially available across the country. In the preamble to the final regulations, EPA stated that ''section 86.1705–97(g)(5) [renumbered as 86.1701(d) in today's rule] requires auto manufacturers to design National LEV vehicles to operate on fuels that are otherwise required under applicable federal regulations.'' In this context, the use of the word ''operate'' refers to the overall performance of the vehicle, such as starting, acceleration, etc. It is not intended to convey that a gasoline-powered vehicle using commercially available fuel outside California would necessarily achieve the same emissions performance as it would using the relatively cleaner fuel required in California. Nonetheless, the emission reductions potentially realized by the National LEV program remain significant relative to the alternative of a fleet of Tier 1 vehicles operating on the same commercially-available fuels.[57] To clarify another provision, 40 CFR 86.1701(d) does not require manufacturers to design methanol, ethanol, electric, compressed natural gas, or propane vehicles to operate on gasoline or any alternative fuel other than the type (methanol, ethanol, electricity, etc.) of fuel for which it was designed.

2. Clarification of Banking and Trading Provisions

In the Final Framework Rule, EPA included a limitation on the nature of the emissions credits recognized under the National LEV program. (See 40 CFR 86.1710(c)(10).) In the preamble, EPA stated that, as with other emission credits or allowances recognized under the Act, any emissions credits generated under the National LEV program are not the holder's property, but instead are a limited authorization to emit the designated amount of emissions. Consequently, nothing in the National LEV regulations or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking. In their comments, manufacturers expressed their concern that this provision might affect the status of the National LEV averaging, banking and trading provisions as a Core Stable Standard, which, if EPA made certain changes to those provisions, would allow the manufacturers to opt out of the National LEV program.

The limitation at issue is a standard provision for EPA emissions trading programs. EPA believes it is important to make it clear that while emissions credits can be generated, banked, bought and sold pursuant to regulatory authorization, they do not constitute property. Rather, they are only a limited authorization to emit a designated amount of emissions. In establishing a credit trading system, EPA is providing an alternative means of compliance with statutory or regulatory limits on emissions. In authorizing the generation and use of emissions credits, EPA has in no way given up its regulatory authority to limit emissions further by modifying either the underlying regulatory

[57] The auto and oil industries are currently conducting studies designed to quantify the emissions performance of LEV-type vehicles when operated on gasoline with varius levels of sulfur. The data tabulation and associated analyses for these studies are not yet completed.

emission limitations or the way they may be achieved through generation or use of emissions credits. As a consequence, if EPA were to modify the provisions relating to emissions credits under National LEV, the Agency would not be subject to challenge on the grounds that its action was a taking of private property protected under the Fifth Amendment to the U.S. Constitution.

However, the limits on the nature of emissions credits included in the Final Framework Rule are not intended to affect the opt-out provisions of the National LEV program. If EPA modified any of the National LEV banking and trading provisions in a manner that triggered an offramp based on a change to a Stable Standard, the manufacturers would be able to opt out of National LEV. In stating the limited nature of emissions credits, EPA only intended to preserve its regulatory authority to make regulatory changes affecting such credits, in the unlikely event that EPA decided such changes were appropriate. Section 86.1710(c)(10) does not nullify either the designation of the banking and trading provisions as a Core Stable Standard or the manufacturers' ability to opt out if EPA changes them over a manufacturer objection. Nevertheless, to clarify further its intent, EPA is adding the following language to the end of 40 CFR 86.1710(c)(10): ''If EPA were to terminate or limit the authorization to emit associated with emissions credits generated under the provisions of this section, this paragraph (c)(10) would have no effect on manufacturers' ability to opt out of the National LEV program pursuant to § 86.1707.''

3. Recordkeeping Requirements

Under the final National LEV regulations, EPA may void certificates ab initio only for a manufacturer's failure to retain records or provide such information as specified upon request. EPA will enforce most of the other National LEV requirements through conditioning the certificate and identifying individual noncomplying vehicles in the event of a violation.

EPA has determined that the authority to void certificates ab initio for major record-keeping and reporting violations is an important enforcement mechanism for programs in which compliance must be demonstrated using data held by manufacturers. For many flexible compliance schemes, such as averaging, banking and trading approaches or phase-ins of requirements, the absence of records and reports on how the regulated entities complied could preclude EPA from enforcing the underlying substantive requirements. For example, EPA could never prove that a particular vehicle violates a fleet average or a phase-in by testing that vehicle; enforcement of a fleet average or a phase-in depends on accurate records for the entire fleet. Thus, in return for giving regulated parties some flexibility in meeting the requirements, EPA must have a mechanism to ensure that the manufacturers keep the records and make the reports necessary to verify compliance.

In their comments, the manufacturers expressed concerns about EPA's authority to void ab initio certificates for recordkeeping or reporting violations. As discussed above, EPA believes that this enforcement mechanism is an important tool to ensure compliance with the provisions of the National LEV program such as averaging, banking, and trading of fleet average NMOG credits and debits. However, EPA does not intend to use this authority for every recordkeeping or reporting violation which might occur under the National LEV regulations. Most violations will likely be minor, such as submitting late reports or not providing all of the required information, and would be considered violations of section 203(a)(1) of the Act, subjecting the manufacturer to applicable civil penalties. EPA would only void a certificate ab initio for the most egregious record-keeping and reporting violations, where a manufacturer's records or reporting are so substantially incomplete that EPA cannot determine compliance with the fleet average NMOG standard or other substantive requirements. EPA regulations currently provide for voiding certificates ab initio for record-keeping and reporting violations for several motor vehicle requirements with some compliance flexibility. (See e.g., Tier 1 (40 CFR 86.094–23), and evaporative emissions (40 CFR 86.096–23)). Both precedent and practical enforcement concerns support providing this strong penalty as a critical means to ensure the enforceability of underlying substantive requirements.

IX. Supplemental Federal Test Procedures

A. Background

The Federal Test Procedure (FTP) is the vehicle test procedure historically used by EPA and the California Air Resources Board (CARB) to determine the compliance of light-duty vehicles and light-duty trucks with the conventional or ''on-cycle'' exhaust emission standards. Using the FTP, emissions performance is tested while the vehicle is driven over a ''typical'' driving schedule (a pattern of acceleration and deceleration over a given period of time), using a dynamometer to simulate the vehicle-to-road interface. Pursuant to the requirements of section 206(h) of the CAA, EPA has promulgated revisions to the Federal Test Procedure to make the test procedure better represent the manner in which vehicles are actually driven (61 FR 54852, October 22, 1996). These revisions added the Supplemental Federal Test Procedure (SFTP) with accompanying emission standards. The SFTP emission standards promulgated by EPA are appropriate for vehicles meeting EPA's Tier 1 emission standards. EPA did not propose LEV-stringency standards as part of its FTP revisions. In addition, the earlier National LEV final rulemaking (62 FR 31192, June 6, 1997) did not include LEV-stringency standards for the SFTP test procedure.

EPA and CARB coordinated closely their review of the FTP, their research efforts, and the development of their respective off-cycle policies. On April 23, 1997, CARB published a proposal detailing their approach to addressing off-cycle emissions in the State of California.[58] Following a comment period that remained open through May 6, 1997, CARB released a notice of public hearing accompanied by a staff report regarding its proposed adoption of SFTP test procedures and standards (''Staff Report'').[59] The CARB proposal had four basic elements to it: test procedures, emission standards for LEVs and ULEVs, emission standards for Tier 1 vehicles and TLEVs, and a phase-in schedule. CARB adopted SFTP requirements largely consistent with their proposal at a public hearing on July 24, 1997, then subsequently released a Notice of Public Availability of Modified Text for a 15 day comment period on September 5, 1997 (''15-day Notice'').[60]

[58] Draft Regulatory Measure to Control Emissions During Non-Federal Test Procedure Driving Conditions From Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles Under 8,500 Pounds Gross Vehicle Weight Rating, Mail-Out #MSC 97–06, April 23, 1997. Available in the public docket for review, and also at http://arbis.arb.ca.gov/msprog/macmail/macmail.htm.

[59] Notice of Public Hearing to Consider Adoption of New Certification Tests and Standards to Control Emissions from Aggressive Driving and Air-Conditioner Usage for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles Under 8,501 Pounds Gross Vehicles Weight Rating, Mail Out #97–13, May 27, 1997. Available in the public docket for review, and also at http://arbis.arb.ca.gov/msprog/macmail/macmail.htm#msc9713.

[60] Notice of Public Availability of Modified Text: Public Hearing to Consider Adoption of New Certification Tests and Standards to Control Emissions from Aggressive Driving and Air-

EPA stated in the National LEV Final Framework Rule its intent to harmonize the SFTP requirements of the National LEV program with California, and proposed to do so in the SNPRM once California completed the adoption of such requirements under its LEV program. As CARB has completed the adoption of SFTP requirements into its LEV program, today's rule harmonizes the CARB and National LEV SFTP programs.[61] The following sections address this harmonization, including changes made as a result of CARB's public hearing on July 24, 1997 and as published in their 15-day Notice, as well as those changes resulting from public comments received on EPA's SNPRM. A more detailed discussion of the SFTP standards and test procedures can be found in the SNPRM (62 FR 44782, August 22, 1997).

B. Elements of the CARB Proposal and Applicability Under National LEV

1. Test Procedure

CARB adopted high speed, high acceleration, and air conditioner supplemental test procedures that are in all respects identical to the procedures adopted by EPA. In fact, CARB incorporated by reference the federal regulations for SFTP test procedures. Therefore, as proposed in the SNPRM, the SFTP test procedures for all vehicles covered by National LEV are those currently contained in federal regulations (40 CFR 86.158, 86.159, 86.160, 86.161, 86.162, 86.163, and 86.164).

2. Emission Standards

California adopted two sets of emission standards, one applicable to LEVs, ULEVs, and super ULEVs (SULEVs), and the other applicable to Tier 1 vehicles and TLEVs. However, the only SULEVs in CARB's regulations are in their Medium-Duty Vehicle category, a class of vehicles not covered by the National LEV Program, and consequently not covered in the following discussion of emission standards or in today's regulations. In addition to the items discussed below, today's final rule makes several changes to be consistent with changes announced at CARB's hearing and published in their 15-day Notice. These include revisions to the language regarding "A/C-on Specific Calibrations" found in the regulations in paragraphs 86.1708(e)(3) and 86.1709(e)(3), and revisions to the "Lean-On-Cruise" Calibration Strategies language found in paragraphs 86.1708(e)(4) and 86.1709(e)(4).

a. LEVs and ULEVs

For each of the affected vehicle weight categories, CARB adopted a set of SFTP certification standards that applies to LEVs and ULEVs (see Table 1). These standards apply only to gasoline, diesel, and fuel-flexible vehicles while operating on gasoline or diesel fuel. These standards apply at 4,000 miles, and in conjunction with the low-mileage standards, CARB provides for no in-use vehicle compliance requirements (recall testing) for SFTP standards. Today's rule adopts the standards shown in Table 1 as the SFTP standards applicable to LEVs and ULEVs covered under the National LEV Program. These standards apply to the National LEV Program in the same manner as adopted by CARB, in that they apply at 4,000 miles and there will be no in-use enforcement to these SFTP standards for LEVs and ULEVs. For further information and justification for this approach, see the SNPRM (62 FR 44783–44784, August 22, 1997).

A commenter pointed out that the proposed regulations contained incorrect SFTP standards for light-duty trucks from 3751 to 5750 pounds loaded vehicle weight (the preamble to the proposed regulations contained the correct standards). This error has been corrected in today's final rule.

TABLE 1—US06 AND SC03 4,000 MILE CERTIFICATION STANDARDS FOR LEVS AND ULEVS

Vehicle type	Loaded vehicle weight (lbs.)	US06 (g/mi)		SC03 (g/mi)	
		NMHC+NOX	CO	NMHC+NOX	CO
LDV	All	0.14	8.0	0.20	2.7
LDT	0–3,750	0.14	8.0	0.20	2.7
	3,751–5,750	0.25	10.5	0.27	3.5

b. Tier 1 Vehicles and TLEVs

CARB's final SFTP standards for Tier 1 vehicles and TLEVs are identical to those promulgated by EPA for Tier 1 vehicles. As under the federal regulations, these standards apply at 50,000 and 100,000 miles, and vehicles certifying to these standards face an in-use compliance requirement. Additionally, CARB also maintains EPA's higher $NMHC+NO_x$ standard for diesel vehicles, as well as EPA's exemption of alternative fuel Tier 1 vehicles and TLEVs from compliance with the SFTP standards. As proposed in the SNPRM, today's final rule adopts CARB's treatment of Tier 1 vehicles and TLEVs.

3. Implementation Schedule

Today's final rule also adopts CARB's four year implementation schedule for SFTP emission standards, which requires compliance of 100 percent of the fleet by MY2004. Beginning with a minimum of 25 percent of the fleet in MY2001, the schedule then requires 50 and 85 percent in MY2002 and MY2003, respectively. Although Tier 1 vehicles and TLEVs are certified to standards of different stringency than LEVs and ULEVs, CARB allows the number of vehicles from both groups to be combined for the purpose of determining compliance with the phase-in schedule. However, CARB ensures an adequate phase-in of LEVs and ULEVs complying with the SFTP by requiring that the percentage of LEVs and ULEVs meeting the SFTP requirements also meet the required phase-in schedule. This means that meeting the phase-in percentage with the subset of the fleet made up of LEVs and ULEVs will also meet the overall phase-in requirement *if* a manufacturer has no Tier 1 vehicles or TLEVs. If a manufacturer does have some Tier 1 or TLEV engine families, it would have the choice of certifying some proportion of those vehicles to the

Conditioner Usage for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles under 8,501 Pounds Gross Vehicle Weight Rating, Mail-Out # MSC 97–17, September 5, 1997. Available in the public docket for review, and also at http:/// www.arb.ca.gov/msprog/macmail/macmail.htm.

[61] Based on comments from AAMA/AIAM with which EPA agrees, a practical result of making this change is that the list of Non-Core Stable Standards in 40 CFR 86.1707(d) must be updated to reflect the change in emphasis from the federal SFTP to the California SFTP. Today's regulations thus incorporate the California SFTP as a Non-Core Stable Standard.

SFTP standards or expending some effort phasing in additional LEV or ULEV engine families in order to maintain compliance with the phase-in requirements. Consistent with the SNPRM, today's rule adopts the same SFTP implementation schedule finalized by CARB, including provisions consistent with the methodology noted above.

To provide some additional flexibility, CARB uses a concept of equivalent phase-in schedules, which are allowed in place of the required phase-in schedule. This approach allows manufacturers to use an alternative phase-in schedule providing that the alternative measures up to the required schedule according to a set methodology. The equivalent phase-in methodology calculates credits by weighting the required phase-in percentages in each model year of the phase-in schedule by the number of model years prior to and including the last model year of the scheduled phase-in, then summing these credits over the phase-in period. These ''credits'' are calculated for the required phase-in schedule. In the case of the CARB SFTP phase-in, the required ''credits'' are: (25% * 4 years) + (50% * 3 years) + (85% * 2 years) + (100% * 1 year) = 520. Any alternative phase-in that results in an equal or larger cumulative total number of credits by the end of the last model year of the scheduled phase-in is acceptable. This allows manufacturers some additional flexibility while ensuring no loss in overall emissions over the phase-in schedule. Additionally, using this methodology, manufacturers can gain credits towards their phase-in through early introductions of vehicles meeting the applicable requirement even prior to the beginning of the required phase-in (e.g., 10 percent compliance five years before full phase-in gains 50 ''points'' towards the total required). Regardless of the number of ''points'' earned by a given alternative schedule, phase-in of 100% must be achieved in the required final year of the phase-in. CARB made one change to this element of the SFTP in the 15-day Notice, adding language that requires manufacturers who choose to use an alternative phase-in schedule to submit the schedule they intend to use ''before or during calendar year 2001 for passenger cars and light-duty trucks and calendar year 2003 for medium-duty vehicles.'' Today's rule adopts an alternative phase-in schedule methodology consistent with the methodology adopted by CARB, including the changes contained in the 15-day Notice.

As proposed in the SNPRM, this alternative phase-in schedule will be enforced much like the current enforcement provisions regarding non-compliance with a phase-in schedule. Specifically, failure to attain the required credits will be regarded as a failure to satisfy the conditions on which the certificate was issued. Vehicles sold in violation of that condition will not be covered by the certificate and hence will be subject to the currently available penalties. Today's regulations contain appropriate revisions to 40 CFR 86.096–30 to implement this approach.

4. Implementation Compliance

To determine manufacturer compliance with the SFTP phase-in levels under the National LEV program, EPA proposed to give the manufacturers the option of combining their entire fleet of light-duty vehicles and light light-duty trucks such that this combined fleet meets the applicable phase-in requirements. EPA also proposed to have manufacturers demonstrate compliance with the phase-in requirements based on vehicles sold outside California, but requested comment on having compliance determinations based on vehicles sold only in California or in all states.

As noted in the SNPRM, EPA supports allowing manufacturers to combine light-duty vehicles and light-duty trucks into one fleet for the purpose of the SFTP phase-in requirements. This approach is consistent with CARB's implementation of the SFTP phase-in, and is the approach contained in today's final rule. However, EPA noted in the SNPRM some concerns with allowing manufacturers to show compliance with National LEV SFTP requirements based on a manufacturer's California fleet mix as opposed to its National LEV fleet mix. AAMA/AIAM commented that manufacturers have already planned which products will be meeting the early-term SFTP requirements in California, and that using national sales volumes would cause changes in their phase-in plans without adequate lead time, creating an undue burden. Based on this, as well as on this commenter's definition of harmonization (''identical in every aspect to the California requirements''), AAMA/AIAM expressed support for the option of using California sales volumes to assess compliance with the SFTP phase-in schedule.

EPA has decided to adopt language in today's rule that addresses the concerns heard from the auto companies by basing the SFTP phase-in compliance on vehicle sales in California. EPA understands the implications of requiring a separate phase-in for vehicles outside California, and agrees that the burden of requiring such a phase-in is unnecessary. However, EPA is adding language to the SFTP phase-in under National LEV to assure that SFTP vehicles are not underrepresented in states outside of California. Given that the phase-in will be demonstrated using California sales, unique cases could potentially arise whereby the California version of a vehicle is certified to the SFTP but the version distributed federally is not. Without some protective language in the regulations, there would be no obligation or requirement for the version marketed in the 49 states outside California to comply with the SFTP, and although the phase-in would be met in California, certainly the potential exists for the rest of the country to fall unacceptably short of the phase-in percentage. To protect against this type of scenario, yet to allow auto manufacturers the flexibility of only having to demonstrate compliance with the phase-in in California, EPA is adding the additional requirement that, for every engine family certified to SFTP standards in California, the ''sibling'' of that vehicle certified under the National LEV program outside California must also be certified to the SFTP standards. Today's regulations define the relationship between California and federal ''sibling'' vehicles as vehicles of the same make and model, and with the same number of cylinders, the same cylinder configuration, the same cylinder volume, the same transmission class, and the same axle ratio. However, the ability to use California sales to demonstrate phase-in compliance applies only to those years of the phase-in with a less than 100 percent compliance requirement (MY2001–2003). When California is scheduled to achieve 100 percent compliance with the SFTP in MY2004, the National LEV fleet must also have attained 100 percent compliance in that model year.

X. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because the regulations in this rule will not have annual impacts on the economy that are likely to exceed $100 million. This rule, along with the Final Framework Rule, sets forth the National LEV program regulations. The Final Framework Rule was determined to be a significant regulatory action. *See* 62 FR 31231 and the Regulatory Impact Analysis. EPA has submitted this rule to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. EPA has updated the Regulatory Impact Analysis (RIA) prepared for the Final Framework Rule. Changes reflect the current program start dates, updated cost information, and other changes to the emissions reduction modeling as discussed in Sec. IV.

B. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Only manufacturers of motor vehicles, a group which does not contain a substantial number of small entities, will have to comply with the requirements of this rule.

C. Unfunded Mandates Reform Act

Under sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA), EPA generally must prepare a written statement to accompany any proposed or final rule that includes a federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year.

EPA has determined that the written statement requirements of sections 202 and 205 of UMRA do not apply to today's rule, and thus do not require EPA to conduct further analyses pursuant to those requirements. National LEV is not a federal mandate because it does not impose any enforceable duties and because it is a voluntary program. Because National LEV would not impose a federal mandate on any party, section 202 does not apply to this rule. Even if these unfunded mandates provisions did apply to this rule, they are met by the Regulatory Impact Analysis prepared pursuant to Executive Order 12866 and contained in the docket.

Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has not prepared such a plan because small governments would not be significantly or uniquely impacted by the rule.

D. Congressional Review of Agency Rulemaking

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Reform Act of 1996, EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. Today's rule is not a ''major rule'' as defined in section 804(2) of the APA, as amended.

E. Reporting and Recordkeeping Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0345.

The information collection would be conducted to support the averaging, banking and trading provisions included in the National LEV program. These averaging, banking and trading provisions would give automobile manufacturers a measure of flexibility in meeting the fleet average NMOG standards. EPA would use the reported data to calculate credits and debits and otherwise ensure compliance with the applicable production levels. When a manufacturer has opted into the voluntary National LEV program, reporting would be mandatory as per the regulations included in this rulemaking. This rulemaking would not change the requirements regarding confidentiality claims for submitted information, which are generally set out in 40 CFR part 2.

The information collection burden associated with this rule (testing, record keeping and reporting requirements) is estimated to average 241.3 hours annually for a typical manufacturer. It is expected that approximately 25 manufacturers will provide an annual report to EPA. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth.

Burden means the total time, effort, or financial resouces expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate also includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR numbers issued by OMB for various regulations to list the information requirements contained in this rule.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

F. Effective Date

This rule is effective upon the date of publication. This expedited effective date is necessary to provide effective final regulations to guide the process for the OTC States and auto manufacturers to opt into the National LEV program in time for the program to begin in model year 1999. Given their planning and production schedules, manufacturers have informed EPA that the Agency must find National LEV in effect early in the 1998 calendar year, at the latest, to allow them to comply with the National LEV requirements for MY1999 vehicles. This requires that the OTC States and the manufacturers complete the opt-in process as soon as possible. While the timing for opt-ins is based on the signature date of the rule, rather than its effective date, it would not be appropriate for parties to have to make the decision to opt in to the program before this rule becomes effective, and if the effective date of these regulations were delayed until thirty days from publication, depending upon the length of time between signature and publication, it is possible that the deadline for OTC State opt-ins would occur before the rule became effective. In addition, because National LEV is a voluntary program, this rule, by itself, does not place a burden on any party. Rather, it provides an opportunity for the OTC States and the manufacturers to avail themselves of the benefits of the National LEV program and voluntarily to become subject to its requirements. Finally, in the SNPRM, EPA took comment on the timing for parties to opt into National LEV, and none of the parties potentially affected by the rule objected to this timing. Given the lack of burden on affected parties and the need to make this rule effective upon publication, the Agency finds good cause for expediting the effective date of the rule. EPA believes that this is consistent with 5 U.S.C. 553(d) (1) and (3).

XI. Judicial Review

Under section 307(b)(1) of the Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication in the **Federal Register**. Under section 307(b)(2) of the Act, the requirements which are the subject of today's rule may not be challenged later in judicial proceedings brought by EPA to enforce these requirements. This rulemaking and any petitions for review are subject to the provisions of section 307(d) of the Clean Air Act.

XII. Statutory Authority

The promulgation of these regulations is authorized by sections 177, 202, 203, 204, 205, 206, 207, 208, 209 and 301 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA) (42 U.S.C. 7507, 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, and 7601).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential Business Information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. The table in § 9.1 is amended by adding the new entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * *	* *
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures:	
* * *	* *
86.1705	2060–0345
86.1707	2060–0345
86.1708	2060–0345
86.1709	2060–0345
86.1710	2060–0345
86.1712	2060–0345
86.1713	2060–0345
86.1714	2060–0345
86.1717	2060–0345
86.1721	2060–0345
86.1723	2060–0345
86.1724	2060–0345
86.1725	2060–0345
86.1726	2060–0345
86.1728	2060–0345
86.1734	2060–0345
86.1735	2060–0345
86.1770	2060–0345
86.1771	2060–0345
86.1776	2060–0345
86.1777	2060–0345
86.1778	2060–0345
* * *	* *

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

3. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, and 7601(a).

Subpart P—[Amended]

4. Section 85.1515 is amended by revising paragraph (c) to read as follows:

§ 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.

* * * * *

(c) Nonconforming motor vehicles or motor vehicle engines of 1994 OP model year and later conditionally imported pursuant to § 85.1505 or § 85.1509 shall meet all of the emission standards specified in 40 CFR part 86 for the model year in which the motor vehicle or motor vehicle engine is modified. At the option of the ICI, the nonconforming motor vehicle may comply with the emissions standards in 40 CFR 86.1708–99 or 86.1709–99, as applicable to a light-duty vehicle or light light-duty truck, in lieu of the otherwise applicable emissions standards specified in 40 CFR part 86 for the model year in which the nonconforming motor vehicle is modified. The provisions of 40 CFR 86.1710–99 do not apply to imported nonconforming motor vehicles. The useful life specified in 40 CFR part 86 for the model year in which the motor vehicle or motor vehicle engine is modified is applicable where useful life is not designated in this subpart.

* * * * *

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

5. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

6. Section 86.1 is amended by revising the entry for ASTM E29–90 in the table in paragraph (b)(1) and by revising the entry to the table in paragraph (b)(4), to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document number and name	40 CFR part 86 reference
* * *	* *
ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	86.609–84; 86.609–96; 86.609–97; 86.609–98; 86.1009–84; 86.1009–96; 86.1442; 86.1708–99; 86.1709–99; 86.1710–99; 86.1728–99
* * *	* *

(4) * * *

Document no. and name	40 CFR part 86 reference
* * *	* *
California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October, 1996.	86.612–97; 86.1012–97; 86.1702–99; 86.1708–99; 86.1709–99; 86.1717–99; 86.1735–99; 86.1771–99; 86.1775–99; 86.1776–99; 86.1777–99; Appendix XVI; Appendix XVII.
* * *	* *

Subpart A—[Amended]

7. Section 86.096–30 is amended by reserving paragraph (a)(22) and by adding paragraphs (a)(23) and (a)(24), to read as follows:

§ 86.096–30 Certification.

* * * * *

(a) * * *

(22) [Reserved]

(23)(i) The Administrator will issue a National LEV certificate of conformity for 1999 model year vehicles or engines certified to comply with the California TLEV, LEV, or ULEV emission standards.

(ii) This certificate of conformity shall be granted after the Administrator has received and reviewed the California Executive Order a manufacturer has received for the same vehicles or engines.

(iii) Vehicles or engines receiving a certificate of conformity under the provisions in this paragraph can only be sold in the states included in the NTR, as defined in § 86.1702, and those states where the sale of California-certified vehicles is otherwise authorized.

(24)(i) The Administrator will issue a National LEV certificate of conformity for 2000 model year vehicles or engines certified to comply with the California TLEV emission standards.

(ii) This certificate of conformity shall be granted after the Administrator has received and reviewed the California Executive Order a manufacturer has received for the same vehicles or engines.

(iii) Vehicles or engines receiving a certificate of conformity under the provisions in this paragraph can only be sold in the states included in the NTR, as defined in § 86.1702, and those states where the sale of California-certified vehicles is otherwise authorized.

* * * * *

§ 86.097–1 [Redesignated as § 86.099–1]

8. Section 86.097–1 is redesignated as § 86.099–1 and revised to read as follows:

§ 86.099–1 General applicability.

Section 86.099–1 includes text that specifies requirements that differ from those specified in § 86.094–1. Where a paragraph in § 86.094–1 is identical and applicable to § 86.099–1, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.094–1.''.

(a) through (b) [Reserved]. For guidance see § 86.094–1.

(c) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 1999 and later model year light-duty vehicles and light light-duty trucks to the provisions of the National Low Emission Vehicle Program contained in subpart R of this part. Subpart R of this part is applicable only to those manufacturers that opt into the National Low Emission Vehicle Program, under the provisions of that subpart, and that have not exercised a valid opt-out from the National Low Emission Vehicle Program, which opt-out has gone into effect under the provisions of § 86.1707. All provisions of this subpart are applicable to vehicles certified pursuant to subpart R of this part, except as specifically noted in subpart R of this part.

(d) [Reserved]

(e) through (f) [Reserved]. For guidance see § 86.094–1.

Subpart B—[Amended]

9. Section 86.101 is amended by revising paragraph (c) to read as follows:

§ 86.101 General applicability.

* * * * *

(c) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 1999 and later model year light-duty vehicles and light light-duty trucks to the provisions of the National Low Emission Vehicle Program contained in subpart R of this part. Subpart R of this part is applicable only to those manufacturers that opt into the National Low Emission Vehicle Program, under the provisions of subpart R of this part, and that have not exercised a valid opt-out from the National Low Emission Vehicle Program, which opt-out has gone into effect under the provisions of § 86.1707. All provisions of this subpart are applicable to vehicles certified pursuant to subpart R of this part, except as specifically noted in subpart R of this part.

Subpart R—[Amended]

10. The table of contents to subpart R is revised to read as follows:

Subpart R—General Provisions for the Voluntary National Low Emission Vehicle Program for Light-Duty Vehicles and Light-Duty Trucks

Sec.

86.1713–99 Light-duty exhaust durability programs.
86.1714–99 Small-volume manufacturers certification procedures.
86.1715–99 [Reserved]
86.1716–99 Prohibition of defeat devices.
86.1717–99 Emission control diagnostic system for 1999 and later light-duty vehicles and light-duty trucks.
86.1718–99 through 86.1720–99 [Reserved]
86.1721–99 Application for certification.
86.1722–99 [Reserved]
86.1723–99 Required data.
86.1724–99 Test vehicles and engines.
86.1725–99 Maintenance.
86.1726–99 Mileage and service accumulation; emission measurements.
86.1727–99 [Reserved]
86.1728–99 Compliance with emission standards.
86.1729–99 through 86.1733–99 [Reserved]
86.1734–99 Alternative procedure for notification of additions and changes.
86.1735–99 Labeling.
86.1736–99 through 86.1769–99 [Reserved]
86.1770–99 All-Electric Range Test requirements.
86.1771–99 Fuel specifications.
86.1772–99 Road load power, test weight, and inertia weight class determination.
86.1773–99 Test sequence; general requirements.
86.1774–99 Vehicle preconditioning.
86.1775–99 Exhaust sample analysis.
86.1776–99 Records required.
86.1777–99 Calculations; exhaust emissions.
86.1778–99 Calculations; particulate emissions.
86.1779–99 General enforcement provisions.
86.1780–99 Prohibited acts.

§ 86.1701–97 [Redesignated as § 86.1701–99 and Amended]

11. Section 86.1701–97 is redesignated as § 86.1701–99 and amended by revising paragraphs (a) and (c) and by adding paragraph (d), to read as follows:

§ 86.1701–99 General applicability.

(a) The provisions of this subpart may be adopted by vehicle manufacturers pursuant to the provisions specified in § 86.1705. The provisions of this subpart are generally applicable to 1999 and later model year light-duty vehicles and light light-duty trucks to be sold in the Northeast Trading Region, and 2001 and later model year light-duty vehicles and light light-duty trucks to be sold in the United States. In cases where a provision applies only to certain vehicles based on model year, vehicle class, motor fuel, engine type, vehicle emission category, intended sales destination, or other distinguishing characteristics, such limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart shall be referred to as the ''National Low Emission Vehicle Program'' or ''National LEV'' or ''NLEV.''

* * * * *

(c) The requirements of this subpart apply to new vehicles manufactured by covered manufacturers through model year 2003. In addition, the requirements of this subpart apply to new vehicles manufactured by covered manufacturers for model years prior to the first model year for which a mandatory federal exhaust emissions program for light-duty vehicles and light light-duty trucks is at least as stringent as the National LEV program with respect to NMOG, NO_X, and CO exhaust emissions, as determined by the Administrator, provided that such a program is promulgated no later than December 15, 2000, and is effective no later than model year 2006.

(d) Adoption of the National LEV program does not impose gasoline or other in-use fuel requirements and is not intended to require any new federal or state regulation of fuels. Vehicles under National LEV will be able to operate on any fuels, including conventional gasoline, that, in the absence of the National LEV program, could be sold under federal or state law.

§ 86.1702–97 [Redesignated as § 86.1702–99 and Amended]

12. Section 86.1702–97 is redesignated as § 86.1702–99 and amended in paragraph (b) by revising the definitions for ''Averaging sets,'' ''Core Stable Standards,'' ''Non-Core Stable Standards,'' ''Northeast Trading Region,'' and ''Point of first sale'' and by adding new definitions in alphabetical order for ''All States Trading Region,'' ''Axle Ratio,'' ''Covered state,'' ''Existing ZEV Mandate,'' ''Ozone Transport Commission States,'' ''Section 177 Program,'' and ''ZEV Mandate,'' to read as follows:

§ 86.1702–99 Definitions.

* * * * *

(b) * * *

* * * * *

All States Trading Region (ASTR) means the region comprised of all states except the OTC States that have not opted into National LEV pursuant to the opt-in provisions at § 86.1705 or that have opted out of National LEV and whose opt-outs have become effective, as provided at § 86.1707; California; and any state outside the OTR with a Section 177 Program in effect that does not allow National LEV as a compliance alternative.

* * * * *

Averaging sets are the categories of LDVs and LDTs for which the manufacturer calculates a fleet average NMOG value. The four averaging sets for fleet average NMOG value calculation purposes are:

(1) Class A delivered to a point of first sale in the Northeast Trading Region;

(2) Class A delivered to a point of first sale in the All States Trading Region;

(3) Class B delivered to a point of first sale in the Northeast Trading Region;

(4) Class B delivered to a point of first sale in the All States Trading Region.

* * * * *

Axle ratio means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

* * * * *

Core Stable Standards means the standards and other requirements listed in § 86.1707(d)(9)(i) (A) through (F).

* * * * *

Covered state means a state that meets the conditions specified under § 86.1705(d).

* * * * *

Existing ZEV Mandate means any state regulation or other law that imposes (or purports to impose) obligations on auto manufacturers to produce, deliver for sale, or sell a certain number or percentage of ZEVs and that was adopted prior to December 16, 1997.

* * * * *

Non-Core Stable Standards means the standards and other requirements listed in § 86.1707(d)(9)(i) (G) through (L).

* * * * *

Northeast Trading Region (NTR) means the region comprised of the states that meet the conditions specified under § 86.1705(d).

* * * * *

Ozone Transport Commission States or OTC States means the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia, and the District of Columbia.

* * * * *

Point of first sale is the location where the completed light-duty vehicle or light-duty truck is purchased, also known as the final product purchase location. The point of first sale may be a retail customer, dealer, distributor, fleet operator, broker, secondary manufacturer, or any other entity which comprises the point of first sale. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first sale.

* * * * *

Section 177 Program means state regulations or other laws, except ZEV Mandates, that apply to any of the following categories of motor vehicles: passenger cars, light-duty trucks up through 6,000 pounds GVWR, and medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

* * * * *

ZEV Mandate means any state regulation or other law that imposes (or purports to impose) obligations on auto manufacturers to produce, deliver for sale, or sell a certain number or percentage of ZEVs.

§ 86.1703–97 [Redesignated as § 86.1703–99 and Amended]

13. Section 86.1703–97 is redesignated as § 86.1703–99 and amended in paragraph (b) by adding ''ASTR'' and ''OTC'' as new abbreviations in alphabetical order, to read as follows:

§ 86.1703–99 Abbreviations.

* * * * *

(b) * * *

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ASTR—All States Trading Region

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OTC—Ozone Transport Commission

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§ 86.1704–97 [Redesignated as § 87.1704–99 and Amended]

14. Section 86.1704–97 is redesignated as § 86.1704–99.

§ 86.1705–97 [Redesignated as § 86.1705–99 and Amended]

15. Section 86.1705–97 is redesignated as § 86.1705–99 and amended by revising the heading of the section, by revising paragraphs (a) introductory text, (a)(2), (a)(3), and (b) through (g), to read as follows:

§ 86.1705–99 General provisions; opt-in.

(a) *Covered manufacturers.* Covered manufacturers must comply with the provisions in this subpart, and in addition, must comply with the requirements of 40 CFR parts 85 and 86. A manufacturer shall be a covered manufacturer if:

* * * * *

(2) Where a manufacturer has included a condition on opt-in provided for in paragraph (c)(2) of this section, that condition has been satisfied; and

(3) The manufacturer has not opted out, pursuant to § 86.1707, or the manufacturer has opted out but that opt-out has not become effective under § 86.1707.

(b) Covered manufacturers must comply with the standards and requirements specified in this subpart beginning in model year 1999. A manufacturer not listed in § 86.1706(c) that opts into the program after EPA issues a finding pursuant to § 86.1706(b) that the program is in effect must comply with the standards and requirements of this subpart beginning in the model year named for the calendar year after the calendar year in which EPA receives the manufacturer's opt-in. Light-duty vehicles and light light-duty trucks sold by covered manufacturers must comply with the provisions of this subpart.

(c) *Manufacturer opt-ins.* (1) To opt into the National LEV program, a motor vehicle manufacturer must submit a written opt-in notification to the Administrator signed by a person or entity within the corporation or business with authority to bind the corporation or business to its election and holding the position of vice president for environmental affairs or a position of comparable or greater authority. The manufacturer shall send a copy of this notification to : Director, Vehicles Programs and Compliance Division; U.S. Environmental Protection Agency; 2565 Plymouth Road; Ann Arbor, Michigan, 48105. The notification must unambiguously and unconditionally (apart from the permissible conditions specified in paragraph (c)(2) of this section) indicate the manufacturer's agreement to opt into the program and be subject to the provisions in this subpart, and include the following language:

XX COMPANY, its subsidiaries, successors and assigns hereby opts into the voluntary National LEV program, as set forth in 40 CFR part 86, subpart R, and agrees to be legally bound by all of the standards, requirements and other provisions of the National LEV program. XX COMPANY commits not to challenge EPA's authority to establish or enforce the National LEV program, and commits not to seek to certify any vehicle except in compliance with the regulations in subpart R.

(2) The opt-in notification may indicate that the manufacturer opts into the program subject to either or both of the following conditions:

(i) That the Administrator finds under § 86.1706 that the National LEV program is in effect, to be indicated with the following language:

This opt-in is subject to the condition that the Administrator make a finding pursuant to 40 CFR 86.1706 that the National LEV program is in effect.

(ii) That certain states (limited to the OTC States) and/or motor vehicle manufacturers opt into National LEV pursuant to § 86.1705, to be indicated with the following language (language in brackets indicates that either or both formulations are acceptable):

This opt-in is subject to the condition that [each of the states of [list state names]/[and] each of the following manufacturers [list manufacturer names]] opt into National LEV pursuant to 40 CFR 86.1705.

(3) A manufacturer shall be considered to have opted in upon the Administrator's receipt of the opt-in notification and satisfaction of the conditions set forth in paragraph (c)(2) of this section, if applicable.

(d) *Covered states.* An OTC State shall be a covered state if:

(1) The state has opted into National LEV pursuant to paragraph (e) of this section;

(2) Where a state has included a condition on opt-in provided for in paragraph (e)(3)(viii) of this section, that condition has been satisfied; and

(3) The state has not opted out, pursuant to § 86.1707, or the state has opted out but that opt-out has not become effective under § 86.1707.

(e) *OTC State opt-ins.* To opt into the National LEV program, a state must submit an opt-in notification to the Administrator, with a copy to Director, Vehicle Programs and Compliance Division; U.S. Environmental Protection Agency; 2565 Plymouth Road; Ann Arbor, Michigan, 48105. The notification must contain the following or substantively identical language:

(1)(i) An Executive Order signed by the governor of the state (or the mayor of the District of Columbia) that unambiguously and unconditionally (apart from the permissible conditions set forth in this section) indicates the state's agreement to opt into the National LEV program and includes the following language (language in brackets indicates that either formulation is acceptable):

This Executive Order [commits STATE to/opts STATE into] the National Low Emission Vehicle (National LEV) program, in accordance with the EPA National LEV program regulations at 40 CFR part 86, subpart R.

I hereby direct HEAD OF APPROPRIATE STATE AGENCY to forward to EPA with my concurrence the [enclosed letter signed/enclosed letter and proposed regulations signed and proposed] by the HEAD OF APPROPRIATE STATE AGENCY, which [specifies/specify] the details of STATE's commitment to the National LEV program.

I hereby direct APPROPRIATE STATE AGENCY to follow the procedures prescribed by the general statutes of STATE to take the necessary steps to adopt regulations and submit a state implementation plan (SIP) revision committing STATE to National LEV in accordance with the EPA National LEV program regulations on SIP revisions at 40 CFR part 86, subpart R, and with section 110 of the Clean Air Act and its implementing regulations at 40 CFR parts 51 and 52.

(ii) States with Existing ZEV Mandates may add language to the Executive Order submitted pursuant to this paragraph (e)(1) confirming that this opt-in will not affect the state's requirements pertaining to ZEVs.

(2)(i) If a state does not submit an Executive Order pursuant to paragraph (e)(1) of this section, a letter signed by the governor of the state (or the mayor of the District of Columbia) that unambiguously and unconditionally (apart from the permissible conditions set forth in this section) indicates the state's agreement to opt into the National LEV program and includes the following language (language in brackets indicates that either formulation is acceptable):

This submittal is made in accordance with the EPA National Low Emission Vehicle (National LEV) regulations at 40 CFR part 86, subpart R to [commit STATE to/opt STATE into] the National LEV program.

[I am forwarding to EPA the [enclosed letter signed enclosed letter and proposed regulations which were signed and proposed] by HEAD OF APPROPRIATE STATE AGENCY at my direction, and which [specifies/specify] the details of STATE's commitment to the National LEV program. I am forwarding to EPA and concur with the [enclosed letter signed/enclosed letter and proposed regulations signed and proposed] by HEAD OF APPROPRIATE STATE AGENCY, which [specifies/specify] the details of STATE's commitment to the National LEV program.]

I [hereby direct/have directed] APPROPRIATE STATE AGENCY to follow the procedures prescribed by the general statutes of STATE to take the necessary steps to adopt regulations and submit a state implementation plan (SIP) revision committing STATE to National LEV in accordance with the EPA National LEV regulations on SIP revisions at 40 CFR part 86, subpart R, and with section 110 of the Clean Air Act and its implementing regulations at 40 CFR parts 51 and 52.

(ii) States with Existing ZEV Mandates may add language to the letter submitted pursuant to this paragraph (e)(2) confirming that this opt-in will not affect the state's requirements pertaining to ZEVs.

(3) A letter signed by the head of the appropriate state agency that would unconditionally (except as set forth in this section) include the following:

(i) States without a Section 177 Program, or with a Section 177 Program but not an Existing ZEV Mandate, shall include the following language:

National LEV is designed as a compliance alternative for OTC State programs adopted pursuant to section 177 of the Clean Air Act that apply to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900. For the duration of STATE's participation in National LEV, [STATE will allow manufacturers to / manufacturers may] comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to the vehicle classes specified above, including any ZEV mandates. STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707. If, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the National LEV standards provided in 40 CFR part 86 subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, STATE's participation in National LEV extends only until model year 2004, except as provided in 40 CFR 86.1707.

For the duration of STATE's participation in National LEV, STATE [intends to/will] forbear from adopting and implementing a ZEV mandate effective before model year 2006.

(ii) States with a Section 177 Program and an Existing ZEV Mandate, shall include the following language:

National LEV is designed as a compliance alternative for OTC State programs adopted pursuant to section 177 of the Clean Air Act that apply to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900. With the exception of any requirements pertaining to ZEVs, for the duration of STATE's participation in National LEV, [STATE will allow manufacturers to / manufacturers may] comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to the vehicle classes specified above. STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707. If, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the National LEV standards provided in 40 CFR part 86 subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, STATE's participation in National LEV extends only until model year 2004, except as provided in 40 CFR 86.1707. Any existing or future requirement pertaining to ZEVs is not affected by STATE's acceptance of National LEV as a compliance alternative for other state requirements.

(iii) All states shall include the following language:

Based on EPA's determination in the preamble to the final National LEV rule [CITE], STATE believes that National LEV will achieve reductions of VOC and NO_X emissions that are equivalent to or greater than the reductions that would be achieved through OTC State adoption of California Low Emission Vehicle programs in the Ozone Transport Region.

(iv) All states shall include the following language:

STATE intends National LEV to be STATE's new motor vehicle emissions control program.

(v) All states shall include the following language:

STATE recognizes that motor vehicle manufacturers are committing to National LEV with the expectation that, until model year 2006 (or, under the circumstances specified above, model year 2004), the OTC States that commit to the National LEV program will allow National LEV as a compliance alternative for state programs adopted pursuant to the authority provided in section 177 of the Clean Air Act, applying to the vehicle classes specified above (except any requirements pertaining to ZEVs in states with Existing ZEV Mandates). It is our intent to abide by this commitment. [However, the provisions of this letter will not have the force of law until STATE adopts them as state regulations. / Regulations providing for STATE's opt-in to National LEV have been approved for proposed rulemaking by APPROPRIATE STATE AGENCY on [INSERT DATE]. However, they will not have the force and effect of law until they are approved as final regulations.] Adoption of state regulations and the contents of a final state implementation plan revision will be determined through a state rulemaking process pursuant to the state requirements at [CITE to STATE law] and federal law. Also, STATE must comply with any subsequent STATE legislation that might affect this commitment.

(vi) All states shall include the following language:

If the manufacturers exit the National LEV program pursuant to the EPA National LEV regulations at 40 CFR 86.1707, STATE [acknowledges / provides in its proposed rule] that the transition from National LEV requirements to any STATE program adopted pursuant to the authority provided in section 177 of the Clean Air Act applying to the vehicle classes specified above, including any requirements pertaining to ZEVs (except any requirements pertaining to ZEVs in states with Existing ZEV Mandates), will proceed in accordance with the EPA National LEV regulations at 40 CFR 86.1707.

(vii) All states shall include the following language:

STATE supports the legitimacy of the National LEV program and EPA's authority to promulgate the National LEV regulations.

(viii) Any state may include the following language:

[This [commitment/opt-in] / As provided in the proposed regulations, STATE's opt-in] is conditioned on all motor vehicle manufacturers (listed in EPA regulations at 40 CFR 86.1706(c)) opting into National LEV and on EPA finding that National LEV is in effect pursuant to 40 CFR 86.1706.

(4) In lieu of statements described in paragraphs (e)(3)(i), (e)(3)(ii) and (e)(3)(vi) of this section, states may submit proposed regulations containing the provisions required under paragraphs (g)(1), (g)(2), (g)(3), and (g)(5) of this section.

(f) A state shall be considered to have opted in upon the Administrator's receipt of the opt-in notification and satisfaction of the conditions set forth in paragraph (e)(3)(viii) of this section, if applicable.

(g) Each OTC State that opts into National LEV pursuant to paragraph (e) of this section shall submit a state implementation plan (SIP) revision within one year and seventy-five days of December 16, 1997 except for the District of Columbia, New Hampshire, Delaware, and Virginia, for which the deadline is 18 months and seventy-five days from December 16, 1997. The SIP revisions shall include the following using identical or substantively identical language:

(1) Covered states without any Section 177 Program, or with a Section 177 Program but not an Existing ZEV Mandate, shall submit regulations containing the following language:

For the duration of STATE's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program, including any mandates for sales of zero emission vehicles (ZEVs), adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707. If, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the National LEV standards provided in 40 CFR part 86 subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, STATE's participation in National LEV extends only until model year 2004, except as provided in 40 CFR 86.1707.

(2) Covered states with a Section 177 Program and an Existing ZEV Mandate shall submit regulations containing the following language:

With the exception of any STATE requirements pertaining to zero emission vehicles (ZEVs), for the duration of STATE's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707. If, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the National LEV standards provided in 40 CFR part 86 subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, STATE's participation in National LEV extends only until model year 2004, except as provided in 40 CFR 86.1707.

Any existing or future STATE requirement pertaining to ZEVs is not affected by STATE's acceptance of National LEV as a compliance alternative for other state requirements.

(3) All covered states shall submit regulations containing the following language:

If a covered manufacturer, as defined at 40 CFR 86.1702, opts out of the National LEV program pursuant to the EPA National LEV regulations at 40 CFR 86.1707, the transition from National LEV requirements to any STATE section 177 program applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/ or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900, will proceed in accordance with the EPA National LEV regulations at 40 CFR 86.1707.

(4) All covered states shall accompany the regulatory language with the following language:

STATE commits to support National LEV as an acceptable alternative to state Section 177 Programs for the duration of STATE's participation in National LEV.

STATE recognizes that its commitment to National LEV is necessary to ensure that National LEV remain in effect.

STATE is submitting this SIP revision in accordance with the applicable Clean Air Act requirements at section 110 and EPA regulations at 40 CFR Part 86 and 40 CFR Parts 51 and 52.

(5) States without Existing ZEV Mandates shall accompany the regulatory language with the following language:

For the duration of STATE's participation in National LEV, STATE [intends to / will] forbear from adopting and implementing a ZEV mandate effective prior to model year 2006. Notwithstanding the previous sentence, if, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the National LEV standards provided in 40 CFR part 86 subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, STATE [intends to / will] forbear from adopting and implementing a ZEV mandate effective prior to model year 2004.

§ 86.1706–97 [Redesignated as § 86.1706–99]

16. Section 86.1706–97 is redesignated as § 86.1706–99 and is revised to read as follows:

§ 86.1706–99 National LEV program in effect.

(a) No later than March 2, 1998, EPA shall issue a finding as to whether National LEV is in effect. EPA shall base this finding on opt-in notifications from OTC States submitted pursuant to § 86.1705(e) and received by EPA January 30, 1998, and on opt-in notifications from manufacturers submitted pursuant to § 86.1705(c) and received by EPA February 17, 1998.

(b) EPA shall find that the National LEV program is in effect and shall subsequently publish this determination if the following conditions have been met:

(1) All manufacturers listed in paragraph (c) of this section have lawfully opted in pursuant to § 86.1705(c) and any conditions placed on the opt-ins allowed under § 86.1705(c)(2) have been met (apart from a condition that EPA find the National LEV program in effect);

(2) Each OTC State that opts in has lawfully opted in pursuant to § 86.1705(e) and any conditions placed on opt-ins by OTC States that are allowed under § 86.1705(e)(3)(viii) have been met (apart from a condition that EPA find the National LEV program in effect); and

(3) No valid opt-out has become effective pursuant to § 86.1707.

(c) List of manufacturers of light-duty vehicles and light-duty trucks:

American Honda Motor Company, Inc.
American Suzuki Motor Corporation
BMW of North America, Inc.
Chrysler Corporation
Fiat Auto U.S.A., Inc.
Ford Motor Company
General Motors Corporation
Hyundai Motor America
Isuzu Motors America, Inc.
Jaguar Motors Ltd.
Kia Motors America, Inc.
Land Rover North America, Inc.
Mazda (North America) Inc.
Mercedes-Benz of North America
Mitsubishi Motor Sales of America, Inc.
Nissan North America, Inc.

Porsche Cars of North America, Inc.
Rolls-Royce Motor Cars Inc.
Saab Cars USA, Inc.
Subaru of America, Inc.
Toyota Motor Sales, U.S.A., Inc.
Volkswagen of America, Inc.
Volvo North America Corporation

17. Section 86.1707–99 is added to subpart R to read as follows:

§ 86.1707–99 General provisions; opt-outs.

A covered manufacturer or covered state may opt out of the National LEV program only according to the provisions of this section. Vehicles certified under the National LEV program must continue to meet the standards to which they were certified, regardless of whether the manufacturer of those vehicles remains a covered manufacturer. A manufacturer that has opted out remains responsible for any debits outstanding on the effective date of opt-out, pursuant to § 86.1710(d)(3).

(a) *Procedures for opt-outs—manufacturers.* To opt out of the National LEV program, a covered manufacturer must notify the Administrator as provided in § 86.1705(c)(1), except that the notification shall specify the condition and final action allowing opt-out, indicate the manufacturer's intent to opt out of the program and no longer be subject to the provisions in this subpart, and specify an effective date for the opt-out. The effective date shall be specified in terms of the first model year for which the opt-out shall be effective, but shall be no earlier than the applicable date indicated in paragraphs (d) through (j) of this section. For an opt-out pursuant to paragraph (d) of this section, the manufacturer shall specify the revision triggering the opt-out and shall also provide evidence that the triggering revision does not harmonize the standard or requirement with a comparable California standard or requirement, if applicable, or that the triggering revision has increased the stringency of the revised standard or requirement, if applicable. The notification shall include the following language:

XX COMPANY, its subsidiaries, successors and assigns hereby opt out of the voluntary National LEV program, as set forth in 40 CFR part 86, subpart R.

(b) *Procedures for opt-outs—OTC states.* To opt out of the National LEV program, a covered state must notify the Administrator through a written statement from the head of the appropriate state agency. A copy of the notification shall be sent to the Director, Vehicle Programs and Compliance Division; U.S. Environmental Protection Agency; 2565 Plymouth Road; Ann Arbor, Michigan, 48105. The notification shall specify the final action allowing opt-out, indicate the state's intent to opt out of the program and no longer be subject to the provisions in this subpart, and specify an effective date for the opt-out. The effective date shall be specified in terms of the first model year for which the opt-out shall be effective, but shall be no earlier than the applicable date indicated in paragraphs (d) through (k) of this section. The notification shall include the following language:

STATE hereby opts out of the voluntary National LEV program, as set forth in 40 CFR part 86, subpart R.

(c) *Procedures for opt-outs—EPA notification.* Upon receipt of an opt-out notification under this section, EPA shall promptly notify the covered states and covered manufacturers of the opt-out. Publication in the **Federal Register** of notice of receipt of the opt-out notification is sufficient but not necessary to meet EPA's obligation to notify covered states and covered manufacturers.

(d) *Conditions allowing manufacturer opt-outs—change to Stable Standards.* A covered manufacturer may opt out if EPA promulgates a final rule or takes other final agency action making a revision not specified in paragraph (d)(9)(iii) of this section to a standard or requirement listed in paragraph (d)(9)(i) of this section and the covered manufacturer objects to the revision.

(1) A covered manufacturer may opt out within 180 calendar days of the EPA action allowing opt-out under this paragraph (d). A valid opt-out based on a revision to a Core Stable Standard shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer's opt-out notification. A valid opt-out based on a revision to a Non-Core Stable Standard may become effective no earlier than the first model year to which that revision applies.

(i) Only a covered manufacturer that objects to a revision may opt out if EPA adopts that revision, except that if such a manufacturer opts out, other manufacturers that did not object to the revision may also opt out pursuant to paragraph (j) of this section. An objection shall be sufficient for this purpose only if it was filed during the public comment period on the proposed revision and the objection states that the proposed revision is sufficiently significant to allow opt-out under this paragraph (d).

(ii) [Reserved]

(2) Within sixty days of receipt of an opt-out notification under this paragraph (d), EPA shall determine whether the opt-out is valid by determining whether the alleged condition allowing opt-out has occurred and whether the opt-out complies with the requirements under paragraphs (a) and (d) of this section. An EPA determination regarding the validity of an opt-out is not a rule, but is a nationally applicable final agency action subject to judicial review pursuant to section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)).

(3) A manufacturer that has submitted an opt-out notification to EPA under this paragraph (d) remains a covered manufacturer until the opt-out has come into effect under paragraph (d)(1) of this section and EPA or a reviewing court determines that the opt-out is valid.

(4) In the event that a manufacturer petitions for judicial review of an EPA determination that an opt-out is invalid, the manufacturer remains a covered manufacturer until final judicial resolution of the petition. Pending resolution of the petition, and starting with the model year for which the opt-out would have come into effect under paragraph (d)(1) of this section if EPA had determined the opt-out was valid, the manufacturer may certify vehicles to any standards in this part applicable to vehicles certified in that model year and sell such vehicles without regard to the limitations contained in § 86.1711. However, if the opt-out is finally determined to be invalid, the manufacturer will be liable for any failure to comply with §§ 86.1710 through 86.1712.

(5) Upon the effective date of a manufacturer's opt-out under this paragraph (d), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted at least two years before the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will

not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(6) If a covered manufacturer opts out under this paragraph (d), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) of this section may opt out within 90 calendar days of the date of either an EPA finding that the opt-out is valid, or a judicial ruling that a disputed opt-out is valid. The state's opt-out notification shall specify an effective date for the state's opt-out no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt out is not effective for model years (as defined in part 85, subpart X) that commence prior to this effective date.

(7) In a state that opts out pursuant to paragraph (d)(6) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(8) In a state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(9)(i) The following are the emissions standards and requirements that, if revised, may provide covered manufacturers the opportunity to opt out pursuant to paragraph (d)(1) of this section:

(A) The tailpipe emissions standards for NMOG, NO_x, CO, HCHO, and PM specified in § 86.1708(b) and (c) and § 86.1709(b) and (c);

(B) Fleet average NMOG standards and averaging, banking and trading provisions specified in § 86.1710;

(C) Provisions regarding limitations on sale of Tier 1 vehicles and TLEVs contained in § 86.1711;

(D) The compliance test procedure (Federal Test Procedure) as specified in subparts A and B of this part, as used for determining compliance with the exhaust emission standards specified in § 86.1708(b) and (c) and § 86.1709(b) and (c);

(E) The compliance test fuel, as specified in § 86.1771;

(F) The definition of low volume manufacturer specified in § 86.1702;

(G) The on-board diagnostic system requirements specified in § 86.1717;

(H) The light-duty vehicle refueling emissions standards and provisions specified in § 86.099–8(d), and the light-duty truck refueling emissions standards and provisions specified in § 86.001–9(d);

(I) The cold temperature carbon monoxide standards and provisions for light-duty vehicles specified in § 86.099–8(k), and for light light-duty trucks specified in § 86.099–9(k);

(J) The evaporative emissions standards and provisions for light-duty vehicles specified in § 86.099–8(b), and the evaporative emissions standards and provisions for light light-duty trucks specified in § 86.099–9(b);

(K) The reactivity adjustment factors and procedures specified in § 86.1777(d);

(L) The Supplemental Federal Test Procedure, standards and phase-in schedules specified in §§ 86.1708(e), 86.1709(e), 86.127(f) and (g), 86.129(e) and (f), 86.130(e), 86.131(f), 86.132(n) and (o), 86.158, 86.159, 86.160, 86.161, 86.162, 86.163, 86.164, and Appendix I to this part, paragraphs (g) and (h).

(ii) The standards and requirements listed in paragraphs (d)(9)(i)(A) through (d)(9)(i)(F) of this section are the ''Core Stable Standards''; the standards and requirements listed in paragraphs (d)(9)(i)(G) through (d)(9)(i)(L) of this section are the ''Non-Core Stable Standards.''

(iii) The following types of revisions to the Stable Standards listed in paragraph (d)(9)(i) of this section do not provide covered manufacturers the right to opt out of the National LEV program:

(A) Revisions to which covered manufacturers do not object;

(B) Revisions to a Non-Core Stable Standard that do not increase the overall stringency of the standard or requirement;

(C) Revisions to a Non-Core Stable Standard that harmonize the standard or requirement with the comparable California standard or requirement for the same model year (even if the harmonization increases the stringency of the standard or requirement), provided that, if the relevant California factor is raised to 1.0 or higher, EPA can only raise to 1.0 any of the reactivity adjustment factors specified in 86.1777 applicable to gasoline meeting the specifications of 86.1771(a)(1); and

(D) Revisions to cold temperature carbon monoxide standards and provisions for light-duty vehicles (as specified in § 86.099–8(k)) and for light light-duty trucks (as specified in § 86.099–9(k)) that are effective after model year 2000.

(10) Promulgation by EPA of mandatory tailpipe standards and other related requirements effective model year 2004 or later does not provide an opportunity to opt out of the National LEV program.

(e) *Conditions allowing manufacturer opt-outs—state Section 177 Program that does not allow National LEV as a compliance alternative.* A covered manufacturer may opt out of National LEV if a covered state takes final action such that it has in its regulations or state law a state Section 177 Program and/or a ZEV Mandate (except in a state with an Existing ZEV Mandate), that does not allow National LEV as a compliance alternative for the duration of the state's commitment to the National LEV program. The state's commitment to National LEV extends until model year 2006. If, no later than December 15, 2000, EPA has not adopted standards at least as stringent as the National LEV standards provided in 40 CFR part 86, subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, the state's commitment to National LEV only extends until model year 2004. A manufacturer could opt out based on this condition even if the state regulations or law are contrary to an approved SIP revision committing the state to National LEV pursuant to § 86.1705(g). For purposes of this paragraph (e), such a state shall be called the ''violating state.''

(1) A covered manufacturer may opt out any time after the violating state takes such final action, provided that the violating state has not withdrawn or otherwise nullified the relevant final action prior to EPA's receipt of the opt-out notification. An opt-out under this paragraph (e) shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer's opt-out notification.

(2) As of the model year named for the calendar year following the calendar year of the violating state's final action, the violating state shall no longer be included in the applicable trading region for purposes of calculating covered manufacturers' compliance with the fleet average NMOG standards under § 86.1710, and § 86.1711 shall no longer apply to vehicles sold in the violating state. Beginning in that model year and until the violating state's requirements become effective pursuant

to sections 110(l) and 177 of the Clean Air Act or until the date specified in the following sentence, whichever is earlier, the National LEV program allows covered manufacturers to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. If the violating state withdraws or otherwise nullifies the relevant violating final action, vehicles sold in that state shall count towards the covered manufacturers' fleet NMOG standards under § 86.1710 and be subject to § 86.1711 as of the model year named for the second calendar year following the calendar year in which the violating state took the final action nullifying or withdrawing the final violating action, or as of the model year named for the fourth calendar year following the calendar year in which the violating state took the violating final action, whichever is later. The two-year lead time required by section 177 of the Clean Air Act for the state Section 177 Program or ZEV Mandate shall run from the date of the violating final action. Notwithstanding an earlier effective date of a manufacturer's opt-out under this paragraph (e), the manufacturer's opt-out is not effective in the violating state until the two-year lead time for the violating state's program has passed (which shall run from the date of the violating final action). For model years for which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emissions reductions from new motor vehicles creditable for state implementation plan requirements, the violating state's emissions reductions shall be based on the emission standards of §§ 86.096—8(a)(1)(i), 86.097–9(a)(1)(i) and subsequent model year provisions, and shall not be based on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that state.

(3) Upon the effective date of a manufacturer's opt-out under this paragraph (e) in any covered state that is not a violating state under this paragraph (e), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-violating state at least two years before the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (e), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(5) In a non-violating state that opts out pursuant to paragraph (e)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(f) *Conditions allowing manufacturer opt-outs—failure to submit SIP revision.* A covered manufacturer may opt out of National LEV if a covered state fails to submit a National LEV SIP revision on the date specified in § 86.1705(g). For purposes of this paragraph (f), such a state shall be called the ''violating state.''

(1) A covered manufacturer may opt out any time after the violating state misses the deadline for its National LEV SIP revision, provided that EPA has not received a National LEV SIP revision from the violating state prior to EPA's receipt of the manufacturer's opt-out notification. If a manufacturer opts out within 180 calendar days from the deadline for the state to submit its National LEV SIP revision, the opt-out must be conditioned on the state not submitting a National LEV SIP revision within 180 calendar days from the deadline for such SIP revision. If the state submits such a SIP revision within the 180-day period, any manufacturer opt-outs under this paragraph (f) would be invalidated and would not come into effect. An opt-out under this paragraph (f) shall be effective no earlier than model year 2000 (or model year 2001 if the violating state is the District of Columbia, New Hampshire, Delaware, or Virginia) or the model year named for the calendar year following the calendar year in which EPA receives the opt-out notification, whichever is later.

(2) For a manufacturer that opts out under this paragraph (f), as of model year 2000 (or model year 2001 if the violating state is the District of Columbia, New Hampshire, Delaware, or Virginia) or the model year named for the calendar year following the calendar year in which EPA receives the opt-out notification, whichever is later, the violating state shall no longer be included in the applicable trading region for purposes of calculating that manufacturer's compliance with the fleet average NMOG standards under § 86.1710 and the manufacturer does not have to comply with § 86.1711 for vehicles sold in the violating state. Beginning in that model year and until the manufacturer's opt-out becomes effective, the National LEV program allows a manufacturer that has opted out under this paragraph (f) to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. For model years in which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emission reductions from new motor vehicles creditable for state implementation plan requirements, the violating state's emissions reductions shall be based on the emissions standards of §§ 86.096–8(a)(1)(i), 86.097–9(a)(1)(i), and subsequent model year provisions, and shall not be based

on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that state. National LEV obligations in the violating state remain unchanged for those manufacturers that do not opt out based on this condition.

(3) Upon the effective date of a manufacturer's opt-out under this paragraph (f), in any covered state that is not a violating state under this paragraph (f), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-violating state at least two years before the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (f), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(5) In a non-violating state that opts out pursuant to paragraph (f)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(g) *Conditions allowing manufacturer opt-outs—inadequate National LEV SIP submission.* A covered manufacturer may opt out of National LEV if EPA disapproves a covered state's National LEV SIP submission or finds that it fails to meet the requirements for a National LEV SIP revision set forth in § 86.1705(g) or if EPA has not taken final action regarding such a SIP submission and more than one year has passed since such SIP submission was submitted to EPA. For purposes of this paragraph (g), such a state shall be called the ''violating state.''

(1) A covered manufacturer may opt out any time after EPA has disapproved a state's National LEV SIP submission or found that it does not meet the requirements of § 86.1705(g), provided that EPA has not subsequently approved a revised National LEV SIP revision from that state and found that the SIP revision meets the requirements of § 86.1705(g). A covered manufacturer may also opt out any time after one year EPA's receipt of a state's National LEV SIP submission, provided that EPA has not approved the revision or has not found that the SIP revision meets the requirements of § 86.1705(g). An opt-out under this condition shall be effective no earlier than the model year named for the calendar year following the calendar year in which the EPA receives the manufacturer's opt-out notification.

(2) For a manufacturer that opts out under this paragraph (g), as of the model year named for the calendar year following the calendar year in which EPA receives the opt-out notification, the violating state shall no longer be included in the applicable trading region for purposes of calculating that manufacturer's compliance with the fleet average NMOG standards under § 86.1710 and the manufacturer does not have to comply with § 86.1711 for vehicles sold in the violating state. Beginning in that model year and until the manufacturer's opt-out becomes effective, the National LEV program allows a manufacturer that has opted out under this paragraph (g) to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. For model years in which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emission reductions from new motor vehicles creditable for state implementation plan requirements, the violating state's emissions reductions shall be based on the emissions standards of §§ 86.096–8(a)(1)(i), 86.097–9(a)(1)(i), and subsequent model year provisions, and shall not be based on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that state. National LEV obligations in the violating state remain unchanged for those manufacturers that do not opt out based on this condition.

(3) Upon the effective date of a manufacturer's opt-out under this paragraph (g), in any covered state that is not a violating state under this paragraph (g), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-violating state at least two years before the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (g), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) of this section may opt out within 90 calendar

days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X that commence prior to this effective date.

(5) In a non-violating state that opts out pursuant to paragraph (g)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(h) *Conditions allowing manufacturer opt-outs—adoption of a ZEV Mandate.* A covered manufacturer to which a ZEV Mandate might apply may opt out of National LEV if a covered state without an Existing ZEV Mandate takes final action such that it has in its regulations or state law a ZEV Mandate that allows National LEV as a compliance alternative that would be effective during the state's commitment to National LEV. For purposes of this paragraph (h), such a state shall be called the ''violating state.''

(1) A covered manufacturer may opt out any time after the violating state takes the final action, provided that the violating state has not withdrawn or otherwise nullified the relevant final action prior to EPA's receipt of the opt-out notification. An opt-out under this opt-out condition shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer's opt-out notification.

(2) For a manufacturer that opts out under this paragraph (h), as of the model year named for the calendar year following the calendar year in which EPA receives the opt-out notification, the violating state shall no longer be included in the applicable trading region for purposes of calculating that manufacturer's compliance with the fleet average NMOG standards under § 86.1710 and the manufacturer does not have to comply with § 86.1711 for vehicles sold in the violating state. Beginning in that model year and until the manufacturer's opt-out becomes effective, the National LEV program allows a manufacturer that has opted out under this paragraph (h) to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. For model years in which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emission reductions from new motor vehicles creditable for state implementation plan requirements, the violating state's emissions reductions shall be based on the emissions standards of §§ 86.096–8(a)(1)(i), 86.097–9(a)(1)(i), and subsequent model year provisions, and shall not be based on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that state. National LEV obligations in the violating state remain unchanged for those manufacturers that do not opt out based on this condition.

(3) Upon the effective date of a manufacturer's opt-out under this paragraph (h), in any covered state that is not a violating state under this paragraph (h), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-violating state at least two years before the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (h), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X) that commence prior to this effective date.

(5) In a non-violating state that opts out pursuant to paragraph (h)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(i) *Conditions allowing manufacturer opt-outs—EPA failure to consider in-use fuel issues.* A covered manufacturer may opt out of National LEV if EPA does not meet its obligations related to fuel sulfur effects, as those obligations are set forth in paragraph (i)(7) of this section.

(1) A manufacturer may request in writing that EPA consider taking a specific action with regard to a fuel sulfur effect described in paragraph (i)(7) of this section. The request must identify the alleged fuel sulfur related problem, demonstrate that the problem exists and is caused by in-use fuel sulfur levels, ask EPA to consider taking a specific action, and demonstrate the emissions impact of the requested change. Within 60 calendar days of EPA's receipt of the manufacturer's request, EPA must consider the manufacturer's request and respond to it in writing, stating the Agency's decision and explaining the basis for the decision. The date of EPA's response is the date the response is signed.

(2) If EPA fails to respond to a manufacturer's request within the time provided, the covered manufacturer that submitted the request may opt out within 180 calendar days of the deadline for the EPA response. (If such a manufacturer opts out, other manufacturers that did not submit requests may also opt out pursuant to paragraph (j) of this section.) An opt-out notification under this paragraph (i) is not valid if received by EPA after EPA responds to the request, even if EPA responds after the expiration of the 60-day EPA deadline. An opt-out under this paragraph (i) shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer's opt-out notification.

(3) Upon the effective date of a manufacturer's opt-out under this paragraph (i), the manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.) and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted at least two years before the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (i), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(5) In a state that opts out pursuant to paragraph (i)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(6) In a state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(7) Following are the actions that a manufacturer may request EPA to consider under paragraph (i)(1) of this section:

(i) During the certification process and upon a manufacturer's written request, EPA will consider allowing the use of an on-board diagnostic system (as required by § 86.1717), that functions properly on low sulfur gasoline, but indicates sulfur-induced passes when exposed to high sulfur gasoline.

(ii) Upon a manufacturer's written request, if vehicles exhibit illuminations of the emission control diagnostic system malfunction indicator light (as defined in § 86.094–17(c)) due to high sulfur gasoline, EPA will consider allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur-induced illumination.

(iii) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur from currently available gasoline, EPA will consider allowing such procedures on a case-by-case basis.

(j) *Conditions allowing manufacturer opt-outs—OTC State or manufacturer opts out.* A covered manufacturer may opt out of National LEV if a covered state or another covered manufacturer opts out of the National LEV program pursuant to this section.

(1) If a covered manufacturer's opt-out under this paragraph (j) is based on a covered state's or covered manufacturer's opt-out under paragraph (e), (f), (g), (h), (i), (j) or (k) of this section, the manufacturer may opt out within 90 calendar days of EPA's receipt of the underlying state's or manufacturer's opt-out notification. If a manufacturer's opt-out under this paragraph (j) is based on a manufacturer's opt-out under paragraph (d) of this section, the manufacturer may only opt out within 90 calendar days of the date of either an EPA finding or a judicial ruling that the opt-out under paragraph (d) of this section is valid. An opt-out under this paragraph (j) shall be effective no earlier than the model year named for the calendar year following the calendar year in which the EPA receives the manufacturer's opt-out notification.

(2) Upon the effective date of a manufacturer's opt-out under this paragraph (j), in any covered state that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted at least two years before the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(3) If a covered manufacturer opts out under this paragraph (j), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(4) In a state that opts out pursuant to paragraph (j)(3) of this section, obligations under National LEV shall be unaffected for covered manufacturers

until the effective date of the state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(5) In a state that has not opted out, obligations under National LEV remain unaffected for covered manufacturers.

(k) *Conditions allowing OTC State opt-outs—EPA finding of inequivalency.* Any covered state may opt out of National LEV if EPA determines that National LEV would not produce (or is not producing) emissions reductions at least equivalent to the OTC State Section 177 Programs.

(1) At any time during National LEV, a covered state may request in writing that EPA reevaluate its initial equivalency determination (of December 16, 1997) that National LEV would produce emissions reductions at least equivalent to the OTC State Section 177 Programs that would be operative in the absence of National LEV. Within 180 calendar days of receipt of the state's request, EPA must take final agency action to determine whether the determination that National LEV will produce at least equivalent emission reductions to OTC State Section 177 Program is still valid. These EPA determinations are not rules, but are nationally applicable final agency actions subject to judicial review pursuant to section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)). In reevaluating its equivalency determination, EPA shall use the same Mobile emission factor model and the same inputs and assumptions (including vehicle miles traveled, MOBILE5a model inputs, inspection and maintenance programs, reformulated gasoline, and permanent migration effects) as used in the initial determination, with the following exceptions:

(i) In modeling the emission reductions from National LEV, EPA shall use any revised federal new motor vehicle standard or other requirement in place of the standard or other requirement as it existed when EPA made its initial determination; and, to the extent that the modeling reflects EPA's implementation of federal new motor vehicle standards or other requirements, EPA shall take any changes in such implementation into account.

(ii) In modeling the emissions reductions that would be achieved through the OTC State Section 177 Programs that would apply in the absence of National LEV, EPA shall take into account all Section 177 Programs adopted by OTC States (including programs that allow National LEV as a compliance alternative) that had been adopted subsequent to EPA's initial equivalency determination. In accounting for the emissions effect of OTC State Section 177 Programs, EPA shall continue to assume that all OTC State Section 177 Programs have the same substantive requirements used in EPA's initial equivalency determination and shall not model any effects of state regulation of medium-duty vehicles (as defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900).

(2) A covered state may opt out of National LEV within 90 calendar days of a final EPA determination pursuant to paragraph (k)(1) of this section that National LEV would not produce (or is not producing) emissions reductions at least equivalent to OTC State Section 177 Programs. The state's opt-out notification shall specify an effective date for the state's opt-out that is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(3) If a covered state opts out based on this condition, a covered manufacturer may opt out of National LEV pursuant to paragraph (j) of this section.

(4) In a state that opts out pursuant to paragraph (k)(1) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of that state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards and other requirements are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

§ 86.1708–97 [Redesignated § 86.1708–99 and Amended]

18. Section 86.1708–97 is redesignated as § 86.1708–99 and amended by revising the section heading, by removing Table R97–7 and redesignating Tables R97–1 through R97–6 as Tables R99–1 through R99–6, by revising the references ''R97–1'', ''R97–2'', ''R97–3'', ''R97–4'', ''R97–5'', and ''R97–6'', to read ''R99–1'', ''R99–2'', ''R99–3'', ''R99–4'', ''R99–5'', and ''R99–6'', respectively, wherever they appear in the section, by revising paragraphs (b)(1)(i), (b)(1)(iii)(B), and (c), and by adding paragraph (e) to read as follows:

§ 86.1708–99 Exhaust emission standards for 1999 and later light-duty vehicles.

* * * * *

(b)(1) *Standards.* (i) Exhaust emissions from 1999 and later model year light-duty vehicles classified as TLEVs, LEVs, and ULEVs shall not exceed the standards in Tables R99–1 and R99–2 in rows designated with the applicable vehicle emission category. These standards shall apply equally to certification and in-use vehicles, except as provided in paragraph (c) of this section. The tables follow:

TABLE R99–1.—INTERMEDIATE USEFUL LIFE (50,000 MILE) STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG	CO	NO_X	HCHO
TLEV	0.125	3.4	0.4	0.015
LEV	0.075	3.4	0.2	0.015
ULEV	0.040	1.7	0.2	0.008

TABLE R99–2.—FULL USEFUL LIFE (100,000 MILE) STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG	CO	NO_X	HCHO	PM (diesels only)
TLEV	0.156	4.2	0.6	0.018	0.08
LEV	0.090	4.2	0.3	0.018	0.08
ULEV	0.055	2.1	0.3	0.011	0.04

* * * * *

(iii) * * *

(B) The applicable NMOG emission standards for flexible-fuel and dual-fuel light-duty vehicles when certifying the vehicle for operation on gasoline shall be the NMOG standards in Tables R99–3 and R99–4 in the rows designated with the applicable vehicle emission category, as follows:

TABLE R99–3.—INTERMEDIATE USEFUL LIFE (50,000 MILE) NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG
TLEV	0.25
LEV	0.125
ULEV	0.075

TABLE R99–4.—FULL USEFUL LIFE (100,000 MILE) NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG
TLEV	0.31
LEV	0.156
ULEV	0.090

* * * * *

(c) *In-use emission standards.* (1) 1999 model year light-duty vehicles certified as LEVs and 1999 through 2002 model year light-duty vehicles certified as ULEVs shall meet the applicable intermediate and full useful life in-use standards in paragraph (c)(2) of this section, according to the following provisions:

(i) [Reserved]

(ii) The applicable in-use emission standards for vehicle emission categories and model years not shown in Tables R99–5 and R99–6 shall be the intermediate and full useful life standards in paragraph (b) of this section.

(2) Light-duty vehicles, including flexible-fuel and dual-fuel light-duty vehicles when operated on gasoline and on an available fuel other than gasoline, shall meet all intermediate and full useful life in-use standards for the applicable vehicle emission category and model year in Tables R99–5 and R99–6, as follows:

TABLE R99–5.—INTERMEDIATE USEFUL LIFE (50,000 MILE) IN-USE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Vehicle emission category	Model year	NMOG	CO	NO_X	HCHO
LEV	1999	0.100	3.4	0.3	0.015
ULEV	1999–2000	0.055	2.1	0.3	0.012
	2001–2002	0.055	2.1	0.3	0.008

TABLE R99–6.—FULL USEFUL LIFE (100,000 MILE) IN-USE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Vehicle emission category	Model year	NMOG	CO	NO_X	HCHO
LEV	1999	0.125	4.2	0.4	0.018
ULEV	1999–2002	0.075	3.4	0.4	0.008

* * * * *

(e) *SFTP Standards.* Exhaust emissions from 2001 and later model year light-duty vehicles shall meet the additional SFTP standards in this paragraph (e) according to the implementation schedules in this paragraph (e). The standards set forth in this paragraph (e) refer to exhaust emissions emitted over the Supplemental Federal Test Procedure (SFTP) as set forth in subpart B of this part and collected and calculated in accordance with those procedures.

(1) *Tier 1 vehicles and* TLEVs. The SFTP exhaust emission levels from new 2001 and subsequent model year light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions and light-duty vehicles certified as TLEVs shall not exceed the standards in Table R99–7.1, according to the implementation schedule in this paragraph (e)(1).

TABLE R99–7.1.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR TIER 1 VEHICLES AND TLEVS

Useful life	Fuel type	NMHC + NO_X composite	CO		
			A/C test	US06 test	Composite option
Intermediate	Gasoline	0.65	3.0	9.0	3.4

TABLE R99–7.1.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR TIER 1 VEHICLES AND TLEVS—Continued

Useful life	Fuel type	NMHC + NO_X composite	CO		
			A/C test	US06 test	Composite option
	Diesel	1.48	NA	9.0	3.4
Full	Gasoline	0.91	3.7	11.1	4.2
	Diesel	2.07	NA	11.1	4.2

(i) *Phase-in requirements—2001 to 2003 model years.* For the purposes of this paragraph (e)(1)(i) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of the following types of vehicles sold in California: light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions, and light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions, and light-duty vehicles and light light-duty trucks certified as TLEVs. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1)(i) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in California.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85

(B) [Reserved]

(ii) *Phase-in requirements—2004 and later model years.* For the purposes of this paragraph (e)(1)(ii) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of the following types of vehicles sold in the United States: light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions, and light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions, and light-duty vehicles and light light-duty trucks certified as TLEVs. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1)(ii) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in the United States.

(A) In 2004 and subsequent model years, manufacturers of light-duty vehicles and light light-duty trucks, including low volume manufacturers, shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet to the standards in this paragraph (e)(l).

(B) [Reserved]

(iii) *Phase-in requirements—vehicles sold outside California.* Light-duty vehicles and light light-duty trucks sold outside California shall be certified to the applicable emission standards in this paragraph (e) if a vehicle has been certifed to the emission standards in this paragraph (e) for sale in California and is identical in the following respects:

(A) Vehicle manufacturer;

(B) Vehicle make and model;

(C) Cylinder block configuration (L–6, V–8, and so forth);

(D) Displacement;

(E) Combustion cycle;

(F) Transmission class; and

(G) Axle ratio.

(2) *LEVs and ULEVs.* The SFTP standards in this paragraph (e)(2) represent the maximum SFTP exhaust emissions at 4,000 miles +/−250 miles or at the mileage determined by the manufacturer for emission data vehicles in accordance with § 86.1726. The SFTP exhaust emission levels from new 2001 and subsequent model year light-duty vehicle LEVs and ULEVs shall not exceed the standards in the following table, according to the implementation schedule in this paragraph (e)(2)(i).

TABLE R99–7.2.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR LEVS AND ULEVS

US06 Test		A/C Test	
NMHC + NO_X	CO	NMHC + NO_X	CO
0.14	8.0	0.20	2.7

(i) *Phase-in requirements—2001 to 2003 model years.* For the purposes of this paragraph (e)(2)(i) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in California.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify to the standards in this paragraph (e)(2) a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85

(B) Manufacturers may use an ''Alternative or Equivalent Phase-in Schedule'' to comply with the phase-in requirements. An ''Alternative Phase-in'' is one that achieves at least equivalent emission reductions by the end of the last model year of the scheduled phase-in. Model-year emission reductions shall be calculated by multiplying the percent of vehicles (based on the manufacturer's projected California sales volume of the applicable vehicle fleet) meeting the new requirements per model year by the number of model years implemented prior to and including the last model year of the scheduled phase-in. The ''cumulative total'' is the summation of the model-year emission reductions (e.g., a four model-year 25/50/85/100 percent phase-in schedule would be calculated as: (25%*4 years) + (50%*3 years) + (85%*2 years) + (100%*1 year)

= 520). Any alternative phase-in that results in an equal or larger cumulative total than the required cumulative total by the end of the last model year of the scheduled phase-in shall be considered acceptable by the Administrator under the following conditions: All vehicles subject to the phase-in shall comply with the respective requirements in the last model year of the required phase-in schedule; and if a manufacturer uses the optional phase-in percentage determination in paragraph (e)(1)(i) of this section, the cumulative total of model-year emission reductions as determined only for light-duty vehicles and light light-duty trucks certified to this paragraph (e)(2) must also be equal to or larger than the required cumulative total by end of the 2004 model year. Manufacturers shall be allowed to include vehicles introduced before the first model year of the scheduled phase-in (e.g., in the previous example, 10 percent introduced one year before the scheduled phase-in begins would be calculated as: (10%*5 years) and added to the cumulative total).

(ii) *Phase-in requirements—2004 and later model years.* For the purposes of this paragraph (e)(2)(ii) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in the United States.

(A) In 2004 and subsequent model years, manufacturers of light-duty vehicles and light light-duty trucks, including low volume manufacturers, shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet to the standards in this paragraph (e)(2).

(iii) *Phase-in requirements—vehicles sold outside California.* Light-duty vehicles and light light-duty trucks sold outside California shall be certified to the applicable emission standards in this paragraph (e) if a vehicle has been certifed to the emission standards in this paragraph (e) for sale in California and is identical in the following respects:

(A) Vehicle manufacturer;

(B) Vehicle make and model;

(C) Cylinder block configuration (L–6, V–8, and so forth);

(D) Displacement;

(E) Combustion cycle;

(F) Transmission class; and

(G) Axle ratio.

(3) *A/C-on specific calibrations.* A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters). Such calibrations must not unnecessarily reduce the $NMHC+NO_X$ emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use. If reductions in control system $NMHC+NO_X$ effectiveness do occur as a result of such calibrations, the manufacturer shall, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness. A/C-on specific ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies (as defined below), which differ from A/C-off ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. Other than these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters shall use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. ''Open-loop'' or ''commanded'' air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, ''closed-loop biasing,'' defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy. In addition, ''transient'' air-fuel enrichment strategy (or ''tip-in'' and ''tip-out'' enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy.

(4) *''Lean-on-cruise'' calibration strategies.* (i) In the Application for Certification, the manufacturer shall state whether any ''lean-on-cruise'' strategies are incorporated into the vehicle design. A ''lean-on-cruise'' air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph. ''Lean-on-cruise'' air-fuel calibration strategies shall not be employed during vehicle operation in normal driving conditions, including A/C usage, unless at least one of the following conditions is met:

(A) Such strategies are substantially employed during the FTP or SFTP;

(B) Such strategies are demonstrated not to significantly reduce vehicle $NMHC+NO_X$ emission control effectiveness over the operating conditions in which they are employed;

(C) Such strategies are demonstrated to be necessary to protect the vehicle occupants, engine, or emission control hardware.

(ii) If the manufacturer proposes to use a ''lean-on-cruise'' calibration strategy, the manufacturer shall specify the circumstances under which such a calibration would be used, and the reason or reasons for the proposed use of such a calibration.

(iii) The provisions of this paragraph (e)(4) shall not apply to vehicles powered by ''lean-burn'' engines or diesel-cycle engines. A ''lean-burn'' engine is defined as an Otto-cycle engine designed to run at an air-fuel ratio significantly greater than stoichiometry during the large majority of its operation.

(5) *Applicability to alternative fuel vehicles.* These SFTP standards do not apply to vehicles certified on fuels other than gasoline and diesel fuel, but the standards do apply to the gasoline and diesel fuel operation of flexible-fuel vehicles and dual-fuel vehicles.

(6) *Single-roll electric dynamometer requirement.* For all vehicles certified to the SFTP standards, a single-roll electric dynamometer or a dynamometer which produces equivalent results, as set forth in § 86.108, must be used for all types of emission testing to determine compliance with the associated emission standards.

§ 86.1709 [Redesignated as § 86.1709–99 and Amended]

19. Section 86.1709–97 is redesignated as § 86.1709–99 and amended by revising the section heading, by removing Table R97–14 and redesignating Tables R97–8 through R97–13 as Tables R99–8 through R99–13, by revising the references ''R97–8'', ''R97–9'', ''R97–10'', ''R97–11'', ''R97–12'', and ''R97–13'' to read ''R99–8'', ''R99–9'', ''R99–10'', ''R99–11'', ''R99–12'', and ''R99–13'', respectively, wherever they appear in the section, by revising paragraphs (b)(1)(i), (b)(1)(iii)(B), and (c), and by adding paragraph (e) to read as follows:

§ 86.1709–99 Exhaust emission standards for 1999 and later light light-duty trucks.

* * * * *

(b)(1) *Standards.* (i) Exhaust emissions from 1999 and later model year light light-duty trucks classified as TLEVs, LEVs, and ULEVs shall not exceed the standards in Tables R99–8 and R99–9 in rows designated with the applicable vehicle emission category and loaded vehicle weight. These standards shall apply equally to certification and in-use vehicles, except as provided in paragraph (c) of this section. The tables follow:

TABLE R99–8.—INTERMEDIATE USEFUL LIFE (50,000 MILE) STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG	CO	NO_X	HCHO
3751	TLEV	0.125	3.4	0.4	0.015
	LEV	0.075	3.4	0.2	0.015
	ULEV	0.040	1.7	0.2	0.008
3751–5750	TLEV	0.160	4.4	0.7	0.018
	LEV	0.100	4.4	0.4	0.018
	ULEV	0.050	2.2	0.4	0.009

TABLE R99–9.—FULL USEFUL LIFE (100,000 MILE) STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG	CO	NO_X	HCHO	PM (diesels only)
0–3750	TLEV	0.156	4.2	0.6	0.018	0.08
	LEV	0.090	4.2	0.3	0.018	0.08
	ULEV	0.055	2.1	0.3	0.011	0.04
3751–5750	TLEV	0.200	5.5	0.9	0.023	0.10
	LEV	0.130	5.5	0.5	0.023	0.10
	ULEV	0.070	2.8	0.5	0.013	0.05

* * * * *

(iii) * * *

(B) The applicable NMOG emission standards for flexible-fuel and dual-fuel light light-duty trucks when certifying the vehicle for operation on gasoline shall be the NMOG standards in Tables R99–10 and R99–11 in the rows designated with the applicable vehicle emission category and loaded vehicle weight, as follows:

TABLE R99–10.—INTERMEDIATE USEFUL LIFE (50,000 MILE) NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG
0–3750	TLEV	0.25
	LEV	0.125
	ULEV	0.075
3751–5750	TLEV	0.32
	LEV	0.160
	ULEV	0.100

TABLE R99–11.—FULL USEFUL LIFE (100,000 MILE) NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG
0–3750	TLEV	0.31
	LEV	0.156
	ULEV	0.090
3751–5750	TLEV	0.40
	LEV	0.200
	ULEV	0.130

* * * * *

(c) *In-use emission standards.* (1) 1999 model year light light-duty trucks certified as LEVs and 1999 through 2001 model year light light-duty trucks certified as ULEVs shall meet the applicable intermediate and full useful life in-use standards in paragraph (c)(2) of this section, according to the following provisions:

(i) [Reserved]

(ii) The applicable in-use emission standards for vehicle emission categories and model years not shown in Tables R99–12 and R99–13 shall be the intermediate and full useful life standards in paragraph (b) of this section.

(2) Light light-duty trucks, including flexible-fuel and dual-fuel light light-duty trucks when operated on gasoline and on an available fuel other than gasoline, shall meet all intermediate and full useful life in-use standards for the applicable vehicle emission category, loaded vehicle weight, and model year in Tables R99–12 and R99–13, as follows:

TABLE R99–12.—INTERMEDIATE USEFUL LIFE (50,000 MILE) IN-USE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Loaded vehicle weight	Vehicle emission category	Model year	NMOG	CO	NO_X	HCH0
0–3750	LEV	1999	0.100	3.4	0.3	0.015
	ULEV	1999–2002	0.055	2.1	0.3	0.008
3751–5750	LEV	1999	0.130	4.4	0.5	0.018

TABLE R99–12.—INTERMEDIATE USEFUL LIFE (50,000 MILE) IN-USE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS—Continued

Loaded vehicle weight	Vehicle emission category	Model year	NMOG	CO	NO_X	HCH0
	ULEV	1999–2002	0.070	2.8	0.5	0.009

TABLE R99–13.—FULL USEFUL LIFE (100,000 MILE) IN-USE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Loaded vehicle weight	Vehicle emission category	Model year	NMOG	CO	NO_X	HCHO
0–3750	LEV	1999	0.125	4.2	0.4	0.018
	ULEV	1999–2002	0.075	3.4	0.4	0.011
3751–5750	LEV	1999	0.160	5.5	0.7	0.023
	ULEV	1999–2002	0.100	4.4	0.7	0.013

* * * * *

(e) *SFTP Standards.* Exhaust emissions from 2001 and later model year light light-duty trucks shall meet the additional SFTP standards in this paragraph (e) according to the implementation schedules in this paragraph (e). The standards set forth in this paragraph (e) refer to exhaust emissions emitted over the Supplemental Federal Test Procedure (SFTP) as set forth in subpart B of this part and collected and calculated in accordance with those procedures.

(1) *Tier 1 vehicles and* TLEVs. The SFTP exhaust emission levels from new 2001 and subsequent model year light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions and light light-duty trucks certified as TLEVs shall not exceed the standards in Table R99–14.1, according to the implementation schedule in this paragraph (e)(1).

TABLE R99–14.1.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR TIER 1 VEHICLES AND TLEVS

Useful life	Fuel type	LVW (lbs)	NMHC + NO_X composite	CO		
				A/C test	US06 test	Composite option
Intermediate	Gasoline	0–3750	0.65	3.0	9.0	3.4
		3751–5750	1.02	3.9	11.6	4.4
	Diesel	0–3750	1.48	NA	9.0	3.4
		3751–5750	NA	NA	NA	NA
Full	Gasoline	0–3750	0.91	3.7	11.1	4.2
		3751–5750	1.37	4.9	14.6	5.5
	Diesel	0–3750	2.07	NA	11.1	4.2
		3751–5750	NA	NA	NA	NA

(i) *Phase-in requirements—2001 to 2003 model years.* For the purposes of paragraph (e)(1)(i) of this section only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of the following types of vehicles sold in California: light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions, and light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions, and light-duty vehicles and light light-duty trucks certified as TLEVs. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1)(i) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in California.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85

(B) [Reserved]

(ii) *Phase-in requirements—2004 and later model years.* For the purposes of paragraph (e)(1)(ii) of this section only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of the following types of vehicles sold in the United States: light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions, light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions, and light-duty vehicles and light light-duty trucks certified as TLEVs. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1)(ii) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in the United States.

(A) In 2004 and subsequent model years, manufacturers of light-duty vehicles and light light-duty trucks, including low volume manufacturers, shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet to the standards in this paragraph (e)(1).

(B) [Reserved]

(iii) *Phase-in requirements—vehicles sold outside California.* Light-duty vehicles and light light-duty trucks sold outside California shall be certified to the applicable emission standards in this paragraph (e) if a vehicle has been certifed to the emission standards in this paragraph (e) for sale in California and is identical in the following respects:

(A) Vehicle manufacturer;

(B) Vehicle make and model;

(C) Cylinder block configuration (L–6, V–8, and so forth);

(D) Displacement;

(E) Combustion cycle;

(F) Transmission class; and

(G) Axle ratio.

(2) *LEVs and ULEVs.* The SFTP standards in this paragraph (e)(2) represent the maximum SFTP exhaust emissions at 4,000 miles +/−250 miles or at the mileage determined by the manufacturer for emission data vehicles in accordance with § 86.1726. The SFTP exhaust emission levels from new 2001 and subsequent model year light light-duty truck LEVs and ULEVs shall not exceed the standards in the following table, according to the implementation schedule in this paragraph (e)(2).

TABLE R99–14.2—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR LEVS AND ULEVS

US06 test		A/C test	
$NMHC + NO_X$	CO	$NMHC + NO_X$	CO
0.25	10.5	0.27	3.5

(i) *Phase-in requirements—2001 to 2003 model years.* For the purposes of this paragraph (e)(2)(i) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in California.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify to the standards in this paragraph (e)(2) a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85

(B) Manufacturers may use an ''Alternative or Equivalent Phase-in Schedule'' to comply with the phase-in requirements. An ''Alternative Phase-in'' is one that achieves at least equivalent emission reductions by the end of the last model year of the scheduled phase-in. Model-year emission reductions shall be calculated by multiplying the percent of vehicles (based on the manufacturer's projected California sales volume of the applicable vehicle fleet) meeting the new requirements per model year by the number of model years implemented prior to and including the last model year of the scheduled phase-in. The ''cumulative total'' is the summation of the model-year emission reductions (e.g., a four model-year 25/50/85/100 percent phase-in schedule would be calculated as: (25%*4 years)+(50%*3 years)+(85%*2 years)+(100%*1 year) = 520). Any alternative phase-in that results in an equal or larger cumulative total than the required cumulative total by the end of the last model year of the scheduled phase-in shall be considered acceptable by the Administrator under the following conditions: All vehicles subject to the phase-in shall comply with the respective requirements in the last model year of the required phase-in schedule; and if a manufacturer uses the optional phase-in percentage determination in paragraph (e)(1)(i) of this section, the cumulative total of model-year emission reductions as determined only for light-duty vehicles and light light-duty trucks certified to this paragraph (e)(2) must also be equal to or larger than the required cumulative total by the end of the 2004 model year. Manufacturers shall be allowed to include vehicles introduced before the first model year of the scheduled phase-in (e.g., in the previous example, 10 percent introduced one year before the scheduled phase-in begins would be calculated as: (10%*5 years) and added to the cumulative total).

(ii) *Phase-in requirements—2004 and later model years.* For the purposes of this paragraph (e)(2)(ii) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in the United States.

(A) In 2004 and subsequent model years, manufacturers of light-duty vehicles and light light-duty trucks, including low volume manufacturers, shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet to the standards in this paragraph (e)(2).

(B) [Reserved]

(iii) *Phase-in requirements—vehicles sold outside California.* Light-duty vehicles and light light-duty trucks sold outside California shall be certified to the applicable emission standards in this paragraph (e) if a vehicle has been certifed to the emission standards in this paragraph (e) for sale in California and is identical in the following respects:

(A) Vehicle manufacturer;

(B) Vehicle make and model;

(C) Cylinder block configuration (L–6, V–8, and so forth);

(D) Displacement;

(E) Combustion cycle;

(F) Transmission class; and

(G) Axle ratio.

(3) *A/C-on specific calibrations.* A/C-on specific calibrations (e.g., air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters). Such calibrations must not unnecessarily reduce the $NMHC+NO_X$ emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use. If reductions in control system $NMHC+NO_X$ effectiveness do occur as a result of such calibrations, the manufacturer shall, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness. A/C-on specific ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies (as defined below), which differ from A/C-off ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. Other than these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters shall use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. ''Open-loop'' or ''commanded'' air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions

control hardware. However, ‘‘closed-loop biasing,’’ defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, shall not be considered an ‘‘open-loop’’ or ‘‘commanded’’ air-fuel enrichment strategy. In addition, ‘‘transient’’ air-fuel enrichment strategy (or ‘‘tip-in’’ and ‘‘tip-out’’ enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, shall not be considered an ‘‘open-loop’’ or ‘‘commanded’’ air-fuel enrichment strategy.

(4) *‘‘Lean-on-cruise’’ calibration strategies.* (i) In the Application for Certification, the manufacturer shall state whether any ‘‘lean-on-cruise’’ strategies are incorporated into the vehicle design. A ‘‘lean-on-cruise’’ air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph. ‘‘Lean-on-cruise’’ air-fuel calibration strategies shall not be employed during vehicle operation in normal driving conditions, including A/C usage, unless at least one of the following conditions is met:

(A) Such strategies are substantially employed during the FTP or SFTP;

(B) Such strategies are demonstrated not to significantly reduce vehicle NMHC+NO_x emission control effectiveness over the operating conditions in which they are employed;

(C) Such strategies are demonstrated to be necessary to protect the vehicle occupants, engine, or emission control hardware.

(ii) If the manufacturer proposes to use a ‘‘lean-on-cruise’’ calibration strategy, the manufacturer shall specify the circumstances under which such a calibration would be used, and the reason or reasons for the proposed use of such a calibration.

(iii) The provisions of this paragraph (e)(4) shall not apply to vehicles powered by ‘‘lean-burn’’ engines or diesel-cycle engines. A ‘‘lean-burn’’ engine is defined as an Otto-cycle engine designed to run at an air-fuel ratio significantly greater than stoichiometry during the large majority of its operation.

(5) *Applicability to alternative fuel vehicles.* These SFTP standards do not apply to vehicles certified on fuels other than gasoline and diesel fuel, but the standards do apply to the gasoline and diesel fuel operation of flexible-fuel vehicles and dual-fuel vehicles.

(6) *Single-roll electric dynamometer requirement.* For all vehicles certified to the SFTP standards, a single-roll electric dynamometer or a dynamometer which produces equivalent results, as set forth in § 86.108, must be used for all types of emission testing to determine compliance with the associated emission standards.

§ 86.1710–97 [Redesignated as § 86.1710–99 and Amended]

20. Section 86.1710–97 is redesignated as § 86.1710–99 and amended by redesignating Tables R97–15 and R97–16 as Tables R99–15 and R99–16, by revising the references ‘‘R97–15’’ and ‘‘R97–16’’ to read ‘‘R99–15’’ and ‘‘R99–16’’, respectively, wherever they appear in the section, by adding introductory text to paragraph (a), by revising paragraphs (a)(1), (a)(3)(i), (a)(3)(iii) (A) and (B), (a)(4)(i), (a)(4)(iii) (A) and (B), (a)(5)(ii), (b)(4), (c)(1) and (2), (c)(6) through (c)(8), (d), (e)(2), and (e)(4)(ii), and by adding paragraph (c)(9), to read as follows:

§ 86.1710–99 Fleet average non-methane organic gas exhaust emission standards for light-duty vehicles and light light-duty trucks.

(a) *Fleet average NMOG standards and compliance.* (1) Each manufacturer shall certify light-duty vehicles or light light-duty trucks to meet the exhaust emission standards in this subpart for TLEVs, LEVs, ULEVs, or ZEVs, or the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions, such that, using the applicable intermediate useful life standards, the manufacturer’s fleet average NMOG values for light-duty vehicles and light light-duty trucks sold in the applicable region according to the specifications of Tables R99–15 and R99–16 are less than or equal to the standards in Tables R99–15 and R99–16 in the rows designated with the applicable vehicle type, loaded vehicle weight, and model year, as follows:

TABLE R99–15—FLEET AVERAGE NON-METHANE ORGANIC GAS STANDARDS (g/mi) FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS SOLD IN THE NORTHEAST TRADING REGION

Vehicle type	Loaded vehicle weight	Model year	Fleet average NMOG
Light light-duty vehicles	All	1999	0.148
		2000	0.095
and			
Light light-duty trucks	0–3750.		
Light light-duty trucks	3751–5750	1999	0.190
		2000	0.124

TABLE R99–16—FLEET AVERAGE NON-METHANE ORGANIC GAS STANDARDS (g/mi) FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS SOLD IN THE ALL STATES TRADING REGION

Vehicle type	Loaded vehicle weight	Model year	Fleet average NMOG
Light-duty vehicles	All	2001 and later.	0.075
and			
Light light-duty trucks	0–3750.		
Light light-duty trucks	3751–5750	2001 and later.	0.100

* * * * *

(3)(i) Each manufacturer's applicable fleet average NMOG value for all light light-duty trucks from 0–3750 lbs. loaded vehicle weight and light-duty vehicles sold in the applicable region according to Tables R99–15 and R99–16 shall be calculated in units of g/mi NMOG according to the following equation, where the term ''Sold'' means sold in the applicable region according to Tables R99–15 and R99–16, and the term ''Vehicles'' means light light-duty trucks from 0–3750 lbs loaded vehicle weight and light-duty vehicles: (((No. of Vehicles Certified to the Federal Tier 1 Exhaust Emission Standards and Sold)×(0.25))+((No. of TLEVs Sold excluding HEVs)× (0.125)) +((No. of LEVs Sold excluding HEVs)×(0.75))+((No. of ULEVs Sold excluding HEVs)×(0.040))+(HEV contribution factor))/(Total No. of Vehicles Sold, including ZEVs and HEVs).

(A) For model years 1997 through 2000, ''Vehicles'' in the preceding equation shall include California-certified vehicles, including vehicles certified to California Tier 1 standards.

(B) For model years 2001 and later, ''vehicles'' in the preceding equation shall not include California-certified vehicles unless they are also certified under the National LEV program.

* * * * *

(iii)(A) For any model year in which a manufacturer certifies its entire fleet of light-duty vehicles and light light-duty trucks from 0–3750 lbs LVW to intermediate useful life NMOG emission standards specified in §§ 86.1708 and 86.1709 that are less than or equal to the applicable fleet average NMOG standard specified in Tables R99–15 and R99–16, the manufacturer may elect not to calculate a fleet average NMOG value for such vehicles for that model year.

(B) The fleet average NMOG value for a manufacturer electing under paragraph (a)(3)(iii)(A) of this section not to calculate a fleet average NMOG value shall be deemed to be the applicable fleet average NMOG standard specified in Table R99–15 or R99–16 for the applicable model year.

* * * * *

(4)(i) Each manufacturer's applicable fleet average NMOG value for all light light-duty trucks from 3751–5750 lbs loaded vehicle weight sold in the applicable region according to Tables R99–15 and R99–16 shall be calculated in units of g/mi NMOG according to the following equation, where the term ''Sold'' means sold in the applicable region according to Tables R97–15 and R97–16, and the term ''Vehicles'' means light light-duty trucks from 3751–5750 lbs loaded vehicle weight: (((No. of Vehicles Certified to the Federal Tier 1 Exhaust Emission Standards and Sold)×(0.32))+((No. of TLEVs Sold excluding HEVs)×(0.160))+((No. of LEVs Sold excluding HEVs)×(0.100))+(No. of ULEVs Sold excluding HEVs)×(0.050))+(HEV Contribution factor))/(Total No. of Vehicles Sold, including ZEVs and HEVs).

(A) For model years 1997 through 2000, ''Vehicles'' in the preceding equation shall include California-certified vehicles, including vehicles certified to California Tier 1 standards.

(B) For model years 2001 and later, ''Vehicles'' in the preceding equation shall not include California-certified vehicles unless they are also certified under the National LEV program.

* * * * *

(iii)(A) For any model year in which a manufacturer certifies its entire fleet of light light-duty trucks from 3751–5750 lbs LVW to intermediate useful life NMOG emission standards specified in § 86.1709 that are less than or equal to the applicable fleet average NMOG requirements specified in Tables R99–15 and R99–16, the manufacturer may elect not to calculate a fleet average NMOG value for such vehicles for that model year.

(B) The fleet average NMOG value for a manufacturer electing under paragraph (a)(4)(iii)(A) of this section not to calculate a fleet average NMOG value shall be deemed to be the applicable fleet average NMOG standard specified in Table R99–15 or R99–16 for the applicable model year.

* * * * *

(5) * * *

(ii) Adequate information includes the number of vehicles purchased, vehicle makes and models, and the associated engine families. A copy of the letter should be sent to: Director, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan, 48105.

* * * * *

(b) * * *

(4) For each applicable region and model year, a manufacturer's available credits or level of debits shall be the sum of credits or debits derived from the respective class A and class B averaging sets for that region and model year. Paragraph (d)(2)(ii)(C) of this section contains a special provision for manufacturers that end model year 2000 with a debit balance in the NTR.

(c) * * *

(1) Only credits generated in the NTR may be used to offset NMOG debits incurred in the NTR. Manufacturers may use in the ASTR credits generated in the NTR.

(2) Only after credits are earned may they be used, traded, or carried over to another model year. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any of its debits from the same region, where the deadline to offset such debits has not yet passed.

* * * * *

(6) Prior to model year 2001, low volume manufacturers may earn credits in the NTR to transfer to other motor vehicle manufacturers for use in the NTR or the ASTR, or to bank for their own use in the ASTR. Such credits will be calculated as set forth in paragraphs (a) and (b) of this section, except that the applicable fleet average NMOG standard shall be 0.25 g/mi NMOG for the averaging set for light light-duty trucks from 0–3750 lbs LVW and light-duty vehicles or 0.32 g/mi NMOG for the averaging set for light light-duty trucks from 3751–5750 lbs LVW. Credits shall be discounted in accordance with the provisions in paragraph (c)(4) of this section.

(7) Prior to model year 2001, manufacturers may earn credits in the ASTR states that are not in the NTR and may bank those credits for use in the ASTR. Such credits will be calculated as set forth in paragraphs (a) and (b) of this section, except that the applicable fleet average NMOG standard shall be 0.25 g/mi NMOG for the averaging set for light light-duty trucks from 0–3750 lbs LVW and light-duty vehicles or 0.32 g/mi NMOG for the averaging set for light light-duty trucks from 3751–5750 lbs LVW, and ''sold'' shall mean sold in the ASTR states that are not in the NTR.

(i) Emission credits earned in the ASTR states outside the NTR prior to model year 2001 shall be treated as generated in model year 2001.

(ii) In the 2001 model year, a one-time discount rate of 10 percent shall be applied to all credits earned under the provisions of this paragraph (c)(7).

(iii) These credits shall be discounted in accordance with the provisions in paragraph (c)(4) of this section.

(8) Manufacturers may earn and bank credits in the NTR for model years 1997 and 1998. In states without a Section 177 Program effective in model year 1997 or 1998, such credits will be calculated as set forth in paragraphs (a) and (b) of this section, except that the applicable fleet average NMOG standard shall be 0.200 g/mi NMOG for the averaging set for light light-duty trucks from 0–3750 lbs LVW and light-duty

vehicles or 0.256 g/mi NMOG for the averaging set for light light-duty trucks from 3751–5750 lbs LVW. In states that opt into National LEV and have a Section 177 Program effective in model year 1997 or 1998, such credits will equal the unused credits earned in those states.

(i) Emissions credits earned in the NTR prior to the 1999 model year shall be treated as generated in the 1999 model year.

(ii) In the 1999 model year, a one-time discount rate of 10 percent shall be applied to all credits earned under the provisions of this paragraph (c)(8).

(iii) These credits shall be discounted in accordance with the provisions in paragraph (c)(4) of this section.

(9) There are no property rights associated with credits generated under the provisions of this section. Credits are a limited authorization to emit the designated amount of emissions. Nothing in the regulations or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking. If EPA were to terminate or limit the authorization to emit associated with emissions credits generated under the provisions of this section, this paragraph (c)(9) would have no effect on manufacturers' ability to opt out of the National LEV program pursuant to § 86.1707.

(d) *Fleet average NMOG debits.* (1) Manufacturers shall offset any debits for a given model year by the fleet average NMOG reporting deadline for the model year following the model year in which the debits were generated. Manufacturers may offset debits by generating credits or acquiring credits generated by another manufacturer. Only credits generated in the NTR may be used to offset NMOG debits generated in the NTR.

(2) The provisions of this paragraph (d)(2) apply only when a manufacturer has a debit balance in the NTR at the end of model year 2000. Manufacturers shall offset any debits incurred in the NTR for model year 2000 by the fleet average NMOG reporting deadline for model year 2001.

(i) A manufacturer may offset debits generated in the NTR in model year 2000 either by generating credits in the NTR in model year 2001 or by applying NTR credits acquired under the provisions of this section.

(ii) If a manufacturer has a debit balance in the NTR at the end of model year 2000, then such manufacturer shall be required to calculate fleet average NMOG values for both the NTR and the ASTR for model year 2001.

(A) The NTR values shall be calculated according to paragraphs (a) and (b) of this section, with the fleet average NMOG standards equal to the standards for model year 2001 in the ASTR.

(B) If such a manufacturer has a credit balance in the NTR for model year 2001, before trading or carrying over credits to the next model year, the manufacturer must apply available NTR credits to offset its debits in the NTR.

(C) Notwithstanding paragraph (b)(4) of this section, for the ASTR and model year 2001, such a manufacturer's available credits or level of debits shall be the sum of credits or debits derived from the respective class A and class B averaging sets for the ASTR and model year 2001, minus any credits used pursuant to paragraph (d)(2)(ii)(B).

(iii) To transfer a credit as an NTR credit earned in model year 2001, a manufacturer must have credits generated in the NTR based on separate fleet average NMOG values calculated for the NTR in model year 2001. In addition, the number of model year 2001 NTR credits available for a manufacturer to transfer cannot exceed the manufacturer's available number of model year 2001 ASTR credits. Any transferred model year 2001 NTR credits shall be deducted from the manufacturer's available model year 2001 ASTR credits.

(3)(i) Failure to meet the requirements of paragraphs (a) through (d) of this section within the required timeframe for offsetting debits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying vehicles not covered by the certificate shall be determined according to this section.

(ii) If debits are not offset within the specified time period, the number of vehicles not meeting the fleet average NMOG standards and not covered by the certificate shall be calculated by dividing the total amount of debits for the model year by the fleet average NMOG standard applicable for the model year and averaging set in which the debits were first incurred. If both averaging sets are in debit, any applicable credits will first be allocated between the averaging sets according to the manufacturer's expressed preferences. Then, the number of vehicles not covered by the certificate shall be calculated using the revised debit values.

(iii) EPA will determine the vehicles for which the condition on the certificate was not satisfied by designating vehicles in those engine families with the highest certification NMOG emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. If this calculation determines that only a portion of vehicles in an engine family contribute to the debit situation, then EPA will designate actual vehicles in that engine family as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(4) If a manufacturer opts out of the National LEV program pursuant to § 86.1707, the manufacturer continues to be responsible for offsetting any debits outstanding on the effective date of the opt-out within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (d)(1) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraph (d)(2) of this section.

(5) For purposes of calculating tolling of the statute of limitations, a violation of the requirements of paragraph (d)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (d)(1) of this section.

* * * * *

(e) * * *

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (c)(2) or (d)(2) of this section.

* * * * *

(4) * * *

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (d)(3) of this section.

* * * * *

§ 86.1711–97 [Redesignated as § 86.1711–99 and Amended]

21. Section 86.1711–97 is redesignated as § 86.1711–99 and amended by removing and reserving paragraph (b).

§ 86.1712–97 [Redesignated as § 86.1712 and Amended]

22. Section 86.1712–97 is redesignated as § 86.1712–99 and amended by revising paragraphs (a)(2)(iii), (b)(1), and (b)(3)(vi), to read as follows:

§ 86.1712–99 Maintenance of records; submittal of information.

(a) * * *

(2) * * *

(iii) EPA engine family, or if applicable for model year 1999 or 2000, the California engine family;

* * * * *

(b) * * *

(1) Each covered manufacturer shall submit an annual report. Except as provided in paragraph (b)(2) of this section, the annual report shall contain, for each averaging set, the fleet average NMOG value achieved, all values required to calculate the NMOG value, the number of credits generated or debits incurred, and all the values required to calculate the credits or debits. For each applicable region (NTR and ASTR), the annual report shall contain the resulting balance of credits or debits.

* * * * *

(3) * * *

(vi) Region (NTR or ASTR) to which the credits belong.

* * * * *

§ 86.1713–97 [Redesignated as § 86.1713–99]

23. Section 86.1713–97 is redesignated as § 86.1713–99.

§ 86.1714–97 [Redesignated as § 86.1714–99]

24. Section 86.1714–97 is redesignated as § 86.1714–99.

§ 86.1716–97 [Redesignated as § 86.1716–99 and Amended]

25. Section 86.1716–97 is redesignated as § 86.1716–99 and amended by removing and reserving paragraph (b).

§ 86.1717–97 [Redesignated as § 86.1717–99 and Amended]

26. Section 86.1717–97 is redesignated as § 1717–99 and amended by revising the section heading, to read as follows:

§ 86.1717–99 Emission control diagnostic system for 1999 and later light-duty vehicles and light-duty trucks.

* * * * *

§ 86.1721–97 [Redesignated as § 86.1721–99]

27. Section 86.1721–97 is redesignated as § 86.1721–99.

§ 86.1723–97 [Redesignated as § 86.1723–99]

28. Section 86.1723–97 is redesignated as § 86.1723–99 and is revised to read as follows:

§ 86.1723–99 Required data.

The provisions of § 86.096–23 and subsequent model year provisions apply to this subpart, with the following exceptions and additions:

(a) The provisions of § 86.096–23(c)(1) and subsequent model year provisions apply to this subpart, with the following addition:

(1) For all TLEVs, LEVs, and ULEVs certifying on a fuel other than conventional gasoline, manufacturers shall multiply the NMOG exhaust certification level for each emission-data vehicle by the appropriate reactivity adjustment factor listed in § 86.1777(d)(2)(i) or established by the Administrator pursuant to Appendix XVII of this part to demonstrate compliance with the applicable NMOG emission standard. For all TLEVs, LEVs, and ULEVs certifying on natural gas, manufacturers shall multiply the NMOG exhaust certification level for each emission-data vehicle by the appropriate reactivity adjustment factor listed in § 86.1777(d)(2)(i) or established by the Administrator pursuant to Appendix XVII of this part and add that value to the product of the methane exhaust certification level for each emission-data vehicle and the appropriate methane reactivity adjustment factor listed in § 86.1777(d)(2)(ii) or established by the Administrator pursuant to Appendix XVII of this part to demonstrate compliance with the applicable NMOG emission standard. Manufacturers requesting to certify to existing standards utilizing an adjustment factor unique to its vehicle/fuel system must follow the data requirements described in Appendix XVII of this part. A separate formaldehyde exhaust certification level shall also be provided for demonstrating compliance with emission standards for formaldehyde.

(2) [Reserved]

(b) The provisions of § 86.096–23(l) introductory text and subsequent model year provisions do not apply to this subpart. The following shall instead apply to this subpart:

(1) Additionally, manufacturers certifying vehicles shall submit for each model year 2001 through 2004 light-duty vehicle and light light-duty truck engine family, the information listed in § 86.096–23(l)(1) and (2). If applicable, manufacturers shall also submit ''Alternative or Equivalent Phase-in Schedules'' before or during calendar year 2001 for light-duty vehicles and light light-duty trucks.

(2) [Reserved]

(c) In addition to the provisions of § 86.096–23 and subsequent model year provisions, the following requirements shall apply to this subpart:

(1) For each engine family certified to TLEV, LEV, or ULEV standards, manufacturers shall submit with the certification application, an engineering evaluation demonstrating that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 deg F. For diesel vehicles, the engineering evaluation shall also include particulate emissions.

(2) [Reserved]

§ 86.1724 [Redesignated as § 86.1724–99 and Amended]

29. Section 86.1724–97 is redesignated as § 86.1724–99 and amended by revising paragraph (b) introductory text and adding paragraph (b)(2), to read as follows:

§ 86.1724–99 Test vehicles and engines.

* * * * *

(b) The provisions of § 86.096–24(b) and subsequent model year provisions apply to this subpart with the following additions:

* * * * *

(2) For vehicles certified to the SFTP exhaust emission standards, if air conditioning is projected to be available on any vehicles within the engine family, the selection of engine codes will be limited selections which have air conditioning available and would require that any vehicle selected under this section has air conditioning installed and operational.

§ 86.1725–97 [Redesignated as § 86.1725–99 and Amended]

30. Section 86.1725–97 is redesignated as § 86.1725–99 and amended by adding paragraph (d), to read as follows:

§ 86.1725–99 Maintenance.

* * * * *

(d) When air conditioning SFTP exhaust emission tests are required, the manufacturer must document that the vehicle's air conditioning system is operating properly and that system parameters are within operating design specifications prior to testing. Required air conditioning system maintenance is performed as unscheduled maintenance that does not require the Administrator's approval.

§ 86.1726–97 [Redesignated as § 86.1726–99 and Amended]

31. Section 86.1726–97 is redesignated as § 86.1726–99 and

amended by revising paragraph (c)(1), to read as follows:

§ 86.1726–99 Mileage and service accumulation; emission measurements.

* * * * *

(c) * * *

(1) For vehicles certified to the SFTP exhaust emission standards, complete exhaust emission tests will include both the FTP and the SFTP tests. The Administrator will accept the manufacturer's determination of the mileage at which the engine-system combination is stabilized for emission data testing if (prior to testing) a manufacturer determines that the interval chosen yields emissions performance that is stable and representative of design intent. Sufficient mileage should be accumulated to reduce the possible effects of any emissions variability that is the result of insufficient vehicle operation. Of primary importance in making this determination is the behavior of the catalyst, EGR valve, trap oxidizer or any other part of the ECS which may have non-linear aging characteristics. In the alternative, the manufacturer may elect to accumulate 4,000 mile +/−250 miles on each test vehicle within an engine family without making a determination.

* * * * *

§ 86.1728–97 [Redesignated as § 86.1728–99]

32. Section 86.1728–97 is redesignated as § 86.1728–99.

§ 86.1734–97 [Redesignated as § 86.1734–99]

33. Section 86.1734–97 is redesignated as § 86.1734–99.

§ 86.1735–97 [Redesignated as § 86.1735–99]

34. Section 86.1735–97 is redesignated as § 86.1735–99.

§ 86.1770–97 [Redesignated as § 86.1770–99 and Amended]

35. Section 86.1770–97 is redesignated as § 86.1770–99 and amended by revising paragraph (a)(2), to read as follows:

§ 86.1770–99 All-Electric Range Test requirements.

* * * * *

(a) * * *

(2) *Driving schedule.*

(i) *Determination of All-Electric Range—Highway.* At the end of the cold soak period, the vehicle shall be placed, either driven or pushed, onto a dynamometer and operated through an Urban Dynamometer Driving Schedule, found in 40 CFR part 86, Appendix I, until the vehicle is no longer able to maintain within 5 miles per hour of the speed requirements or within 2 seconds of the time requirements of the driving schedule. For hybrid electric vehicles, this determination shall be performed without the use of the auxiliary power unit.

(ii) *Determination of All-Electric Range—Urban.* At the end of the cold soak period, the vehicle shall be placed, either driven or pushed, onto a dynamometer and operated through a Highway Fuel Economy Driving Schedule, found in 40 CFR part 600, Appendix I, until the vehicle is no longer able to maintain within 5 miles per hour of the speed requirements or within 2 seconds of the time requirements of the driving schedule. For hybrid electric vehicles, this determination shall be performed without the use of the auxiliary power unit.

* * * * *

§ 86.1771–97 [Redesignated as § 86.1771–99]

36. Section 86.1771–97 is redesignated as § 86.1771–99.

§ 86.1772–97 [Redesignated as § 86.1772–99 and Amended]

37. Section 86.1772–97 is redesignated as § 86.1772–99 and amended by revising the section heading, to read as follows:

§ 86.1772–99 Road load power, test weight, and inertia weight class determination.

* * * * *

§ 86.1773–97 [Redesignated as § 86.1773–99 and Amended]

38. Section 86.1773–97 is redesignated as § 86.1773–99 and amended by adding paragraph (d), to read as follows:

§ 86.1773–99 Test sequence; general requirements.

* * * * *

(d) A manufacturer has the option of simulating air conditioning operation during testing at other ambient test conditions provided it can demonstrate that the vehicle tailpipe exhaust emissions are representative of the emissions that would result from the SC03 cycle test procedure and the ambient conditions of paragraph 86.161–00. The Administrator has approved two optional air conditioning test simulation procedures, AC1 and AC2, for the 2001 to 2003 model years only. If a manufacturer desires to conduct an alternative SC03 test simulation other than AC1 and AC2, or the AC1 and AC2 simulations for the 2004 and subsequent model years, the simulation test procedure must be approved in advance by the Administrator.

§§ 86.1774–97 through 86.1780–97 [Redesignated as §§ 86.1774–99 through 86.1780–99]

39. Section 86.1774–97 is redesignated as § 86.1774–99.

40. Section 86.1775–97 is redesignated as § 86.1775–99.

41. Section 86.1776–97 is redesignated as § 86.1776–99.

42. Section 86.1777–97 is redesignated as § 86.1777–99.

43. Section 86.1778–97 is redesignated as § 86.1778–99.

44. Section 86.1779–97 is redesignated as § 86.1779–99.

45. Section 86.1780–97 is redesignated as § 86.1780–99.

Appendix XVIII to part 86 [Amended]

46. Appendix XVIII to part 86 is amended by redesignating the second of the two paragraphs currently designated as (b)(3) as paragraph (b)(4).

[FR Doc. 97–33314 Filed 12–31–97; 8:45 am]
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Wednesday
January 7, 1998

Part III

Federal Communications Commission

47 CFR Parts 0 and 1

Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[CC Docket No. 96–238; FCC 97–396]

Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Report and Order that changed the rules for processing formal complaints filed against common carriers. The Report and Order adopted rules that are necessary to implement certain provisions contained in the 1996 Act that prescribe deadlines ranging from 90 days to 5 months for resolution of certain types of complaints against common carriers. The rules adopted in the Report and Order require or encourage parties to engage in pre-filing activities, change service requirements, modify the form and content of initial pleadings, shorten filing deadlines, eliminate pleading opportunities that were not useful or necessary, and modify the discovery process.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Deena Shetler (202) 418–7296. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 96–238, adopted and released on November 25, 1997. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street NW, Washington D.C. 20036, (202) 857–3800.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Paperwork Reduction Act

This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–12. Written comments by the public on the information collections are due February 6, 1998. OMB notification of action is due March 9, 1998. Comments should address: (1) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0411.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form No.: FCC Form 485.

Type of Review: Revision.

Respondents: Individuals or households; businesses or other for profit, including small business; not-for-profit institutions; state, local or tribal government.

Section/title	No. of respondents	Est. time per respondent	Total annual burden (hours)
a. Service	760	1.0	760
b. Pleading Content Requirements	760	3.0	2,280
c. Discovery	380 (complainants)	2.25	855
	380 (defendants)	1.5	570
Estimate for recordkeeping	760	0.5	380
d. Scanning	38	5.0	190
e. Damages	380	1.0	380
f. Briefs	760	3.0	2,280
g. Directory of Service Agents	4,965	0.25	1,241.25
h. Joint Statement of Stipulated Facts and Status Conferences	760	2.0	1,520
i. Filing of Copies of Proposed Orders on Disks	760	0.5	380
j. FCC 485-Intake Form	380	0.5	190

Total Annual Burden: 11,026.25 hours.

Estimated Costs Per Respondents: $150.00 for each respondent that files a complaint against a common carrier, it is estimated that 380 complaints will be filed in the next year.

Needs and Uses: The information has been and is currently being used by the FCC to determine the sufficiency of complaints and to resolve the merits of disputes between the parties.

The Report and Order requires all complainants to personally serve their formal complaint on the defendant, as well as serve copies of the complaint with the Mellon Bank, the Secretary of the Commission, and the responsible Bureau or Bureaus. This requirement will speed up the proceeding by eliminating delays in the defendant receiving a copy of the complaint.

Regarding changes to the pleading requirements, the Report and Order concludes that complaints, answers, and any necessary replies must contain complete statements of relevant facts and supporting documentation; an inventory of all documents relevant to the complaint; an identification of all individuals with information relevant to the complaint; and a computation of any damages claimed. The Report and Order concludes that each complaint must contain verification of payment of the filing fee, a certificate of service, and certification that each complainant has mailed a certified letter to each defendant outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier that invited a response within a reasonable time period and a summary of all additional steps taken to resolve the dispute prior to the filing of the complaints, or an explanation of why no such steps were taken. The Report and Order concludes that each answer must contain certification that each defendant has discussed the possibility of settlement with each complainant prior to the filing of the complaint, or an explanation of why such discussion was not feasible. The Report and Order also concludes that Answers must be filed within 20 days of service of the complaint on the defendant by the complainant. The Report and Order requires that all pleadings be accompanied by copies of relevant tariffs. The Report and Order concludes that all dispositive motions be accompanied by proposed finding of facts and conclusions of law in both hard copy and on a computer disk, formatted to be compatible with the Commission's word processing software. The Report and Order concludes that no amendments to complaints will be allowed and no cross-complaints or counterclaims may be filed. The Report and Order further requires parties to submit a joint statement of disputed and undisputed facts and key legal issues at least two business days prior to the scheduled date of the initial status conference. These proposals will promote agreement on a significant number of disputed facts and legal issues, as well as serving to better inform the Commission of the factual and legal areas in dispute.

The Report and Order concludes that complainants must file and serve any requests for interrogatories, up to a limit of 10, concurrently with their complaints, defendants must file and serve any requests for interrogatories, up to a limit of 10, prior to or concurrently with their answer, and complainants must file and serve any requests for interrogatories that are directed solely at facts underlying affirmative defenses asserted by the defendant in its answer, up to a limit of 5, within 3 calendar days of service of the defendant's answer. The Report and Order concludes further that individuals who are provided access to proprietary information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party. Parties must maintain a log recording the number of copies made of all proprietary materials and the persons to whom the copies have been provided. Upon termination of a formal complaint proceeding, all originals and reproduction of any proprietary materials disclosed in that proceeding, along with the log recording persons who received copies of such materials, shall be provided to the producing party. These requirements will lead to the disclosure of information relevant to the resolution of formal complaints earlier in the complaint proceeding, thus, allowing for timely resolution of these complaints.

The Report and Order also concludes that the Commission may impose a scanning or other electronic formatting requirement for submission of large numbers of documents in certain cases. This requirement will assist in the efficient management of documents in those cases where the review of large numbers of documents is necessary to the resolution of a dispute.

The Report and Order requires that, where the Commission has ordered parties to attempt to negotiate a damages amount according to an approved damages formula, the parties must submit to the Commission, within thirty days, the written results of such negotiations. The written statement shall contain one of the following: (1) the parties' agreement as to the amount of damages; (2) a statement that the parties are continuing to negotiate in good faith and a request for an extension of time to continue such negotiations; or (3) the bases for the continuing dispute and the reasons why no agreement can be reached. This requirement will encourage parties to negotiate the resolution of damages claims diligently and ensure that the failure of parties to so negotiate will be remedied by the Commission.

The Report and Order resolves that briefs may be prohibited or limited. Where permitted, briefs must contain all claims and defenses that the party wants the Commission to address. Each brief must attach all documents on which it relies and explain how each attachment is relevant to the issues. Brief length has been shortened to 25 pages for initial briefs and 10 pages for reply briefs. This requirement will ensure that briefs will not be filed where they would be redundant of filings already made with the Commission and that briefs will be filed where necessary to the full resolution of a formal complaint.

The Report and Order requires all carriers subject to the Communications Act of 1934, as amended, to file in writing a designation of agent for service of process with the Commission, to facilitate service of process in all Commission proceedings.

The Report and Order concludes that parties must file a joint statement of stipulated facts, disputed facts and key legal issues at least two business days prior to the initial status conference. This requirement will serve to narrow the issues in dispute and serve as further information to be considered in determining the necessity of any discovery sought by the parties. The Report and Order also concludes that parties must submit a joint proposed order memorializing the rulings made at each status conference by the close of business on the business day following the date the status conference was held. Alternatively, parties may submit a transcript of the rulings made at each status conference by the close of business on the third business day following the date the status conference was held. This requirement will save Commission staff time and ensure that the parties fully understand the rulings that will impact the proceedings.

The Report and Order concludes that all proposed orders must be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current wordprocessing software. This requirement increasing the efficiency of the formal complaint process by providing Commission staff with the ability to adopt proposed rules either in whole or in part where necessary.

Finally, the Report and Order concludes that complainants are required to submit a completed intake form with its formal complaint to indicate that the complaint meets the threshold requirements for stating a cause of action. This requirement will help to prevent the filing of procedurally deficient complaints.

Summary of Report and Order

[Report and Order in CC Docket No. 96–238]

I. Introduction

1. In February 1996, Congress passed and the President signed the Telecommunications Act of 1996 (''1996 Act''). One of the main goals of the 1996 Act is to establish a ''pro-competitive, deregulatory'' national policy framework for the telecommunications industry. In accordance with this goal, sections 208, 260, 271, and 275 of the Act contain deadlines ranging from ninety days to five months for the Commission's resolution of certain complaints filed against the Bell Operating Companies (''BOCs''), local exchange carriers (''LECs''), and other telecommunications carriers that are subject to the requirements of the Act. Provisions of the 1996 Act further direct the Commission to establish such procedures as are necessary for the review and resolution of such

complaints within the statutory deadlines. Prompt and effective enforcement of the Act and the Commission's rules is crucial to attaining the 1996 Act's goals of full and fair competition in all telecommunications markets. Such widespread competition will ensure that the American public derives the full benefit of such competition through new and better products and services at affordable rates.

2. We conclude that, in order to fulfill the goals and meet the statutory deadlines of the 1996 Act, we must revise our formal complaint rules to provide a forum for prompt resolution of all complaints of unreasonably discriminatory or otherwise unlawful conduct by telecommunications carriers, and thus to reduce impediments to robust competition in all telecommunications markets. Consistent with the Congressional mandate to expedite the processing of formal complaints, on November 26, 1996, the Commission released a *Notice of Proposed Rulemaking,* 61 FR 67978 (December 26, 1996) (''*NPRM*'') proposing changes to the rules that govern formal complaints against common carriers. In the *NPRM* we articulated our goal of expediting the resolution of all formal complaints, not just those enumerated in the 1996 Act. The *NPRM* sought public comment on comprehensive rule changes and additions that would: (1) encourage parties to attempt to settle their disputes before filing formal complaints; (2) facilitate the filing and service of complaints and related pleadings; (3) improve the content and utility of the initial pleadings filed by both parties, while reducing reliance on discovery and subsequent pleading opportunities; and (4) eliminate unnecessary or redundant pleadings and other procedural devices.

3. In this *Report and Order,* we adopt certain of the proposed rules, with some modifications. The amended rules will foster our ability to meet the statutory complaint resolution deadlines of the 1996 Act and expedite the resolution of all formal complaints, while safeguarding the due process interests of affected parties. The rules we adopt today apply to all formal complaints, except complaints alleging violations of section 255. A uniform approach will ensure that the Commission places on all formal complaints the same pro-competitive emphasis underlying the 1996 Act's complaint resolution deadlines. The rules we adopt in this *Report and Order* shall be important tools for promptly assessing a common carrier's compliance with the requirements of the Act and our rules. In addition, these rules provide for suitable remedial actions where appropriate.

4. We intend to closely monitor the effectiveness of our new streamlined rules in promoting the pro-competitive goals of the Act. We will not hesitate to re-visit the rules and policies adopted in this *Report and Order* if we later determine that further modifications are needed to ensure that complaint proceedings are promptly and fairly resolved and, more generally, to promote the Act's goal of full and fair competition in all telecommunications markets.

5. In addition, Commission staff retains considerable discretion under the new rules to, and is indeed encouraged to, explore and use alternative approaches to complaint adjudication designed to ensure the prompt discovery of relevant information and the full and fair resolution of disputes in the most expeditious manner possible. We recently established an Enforcement Task Force, the principal mission of which is to promote timely and appropriate enforcement of the pro-competitive policies of the 1996 Act. Among other duties, the Enforcement Task Force has been charged with identifying and investigating actions by common carriers that may be hindering competition in telecommunications markets and with initiating enforcement actions where necessary to remedy conduct that is unreasonable, anti-competitive or otherwise harmful to consumers. The Enforcement Task Force is considering whether to recommend alternative forms of complaint adjudications and enforcement actions to ensure that the goals underlying the pro-competitive policies of the 1996 Act and the Commission's implementing rules and orders are met. Any such recommendation may form the basis for a subsequent *Report and Order* to be considered by the Commission at a later date.

6. Finally, we note that section 207 of the Act gives any person the option of pursuing claims for damages against common carriers based on alleged violations of the Act either at the Commission or before a federal district court of competent jurisdiction. Thus, parties looking to recover monetary damages are free to weigh the advantages of bringing their claims before a federal district court against the benefits of proceeding under the Commission's expedited complaint procedures.

II. Background

A. Statutory Framework for Complaints Against Common Carriers

7. Prior to enactment of the 1996 Act, sections 206 to 209 of the Act provided the statutory framework for our rules for resolving formal complaints filed against common carriers. Section 206 of the Act establishes the liability of a common carrier for damages sustained by any person or persons as a consequence of that carrier's violation of any provision of the Act. Section 207 of the Act permits any person claiming to be damaged by the actions of any common carrier either to make a complaint to the Commission or bring suit in federal district court for the recovery of such damages. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Section 208(a) specifically states that ''it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.'' Section 209 of the Act specifies that, if ''the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.''

8. In 1988, Congress added subsection 208(b) to require that complaints filed with the Commission concerning the lawfulness of a common carrier's charges, practices, classifications or regulations, must be resolved by the Commission in a final, appealable order within twelve months from the date filed, or fifteen months from the date filed if ''the investigation raises questions of fact of . . . extraordinary complexity.'' In addition, Congress amended subsection 5(c)(1) to require that such decisions be made by the Commission, not the Bureau staff pursuant to delegated authority.

B. Complaint Provisions Amended and Added by the 1996 Act

9. As amended or added by the 1996 Act, sections 208, 260, 271, and 275 of the Act all contain deadlines for the Commission's resolution of formal complaints alleging violations under the particular section by a common carrier.

10. *Section 208.* The 1996 Act amended section 208, entitled ''Complaints to the Commission.'' Section 208(b)(1) now mandates that ''the Commission shall, with respect to any investigation under [section 208(b)] of the lawfulness of a charge,

classification, regulation, or practice, issue an order concluding such investigation within 5 months after the date on which the complaint was filed,'' rather than the twelve to fifteen month deadline previously imposed. In addition, subsection 208(b)(2) provides that any such investigation initiated prior to enactment of subsection 208(b)(2) must be concluded within twelve months after the date of enactment.

11. *Section 260.* The 1996 Act added section 260, entitled ''Provision of Telemessaging Service.'' Section 260(b) provides that:

[T]he Commission shall establish procedures for the receipt and review of complaints concerning violations of [section 260(a)] or the regulations thereunder that result in material financial harm to a provider of telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, the Commission shall, within 60 days after receipt of the complaint, order the local exchange carrier and any affiliates to cease engaging in such violation pending such final determination.

12. *Section 271.* The 1996 Act added section 271, entitled ''Bell Operating Company Entry into InterLATA Services.'' Section 271(d)(6)(B) directs the Commission to ''establish procedures for the review of complaints concerning failures by [BOCs] to meet conditions required for approval'' under section 271(d)(3) to provide in-region interLATA services. Section 271(d)(6)(B) further provides that, ''[u]nless the parties otherwise agree, the Commission shall act on such complaint within 90 days.''

13. *Section 275.* The 1996 Act added section 275, entitled ''Alarm Monitoring Services.'' Section 275(c) requires the Commission to ''establish procedures for the receipt and review of complaints concerning violations of [section 275(b)] or the regulations thereunder that result in material financial harm to a provider of alarm monitoring service.'' Section 275(c) further provides that:

[S]uch procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, * * * the Commission shall, within 60 days after receipt of the complaint, order the incumbent local exchange carrier * * * and its affiliates to cease engaging in such violation pending such final determination.

14. The 1996 Act also added several provisions that reference complaint proceedings but do not contain resolution deadlines.

15. *Section 255.* The 1996 Act added section 255, entitled ''Access by Persons with Disabilities.'' Section 255 requires manufacturers of telecommunications equipment or customer premises equipment to ensure that the equipment is ''designed, developed, and fabricated to be accessible to and usable by individuals with disabilities'' and further requires any providers of telecommunications services to ''ensure that the service is accessible to and usable by individuals with disabilities.'' Section 255 provides that ''[t]he Commission shall have exclusive jurisdiction with respect to any complaint under this section'' but imposes no specific resolution deadline for such complaints. We have initiated a separate proceeding to implement the provisions of section 255.

16. *Section 274.* The 1996 Act added section 274, entitled ''Electronic Publishing by Bell Operating Companies.'' Section 274(e)(1) provides that ''any person claiming that an act or practice of any [BOC], affiliate, or separated affiliate constitutes a violation of [section 274] may file a complaint with the Commission or bring suit in federal district court as provided in section 207 of the Act'' and that a ''[BOC], affiliate, or separated affiliate'' shall be liable for damages as provided in section 206 of the Act. Similarly, subsection 274(e)(2) permits an aggrieved person to apply to the Commission for a cease-and-desist order or to a U.S. District Court for an injunction or order compelling compliance with section 274. None of the complaint provisions in section 274 contain deadlines for Commission action.

17. In addition, the 1996 Act imposed other requirements on the BOCs and other common carriers which could lead to formal complaint actions under section 208. For example, section 254(k), entitled ''Subsidy of Competitive Service Prohibited,'' prohibits telecommunications carriers from using non-competitive services to subsidize services that are subject to competition. The 1996 Act also added section 276, entitled ''Provision of Payphone Service.'' section 276(a) prohibits a BOC from subsidizing its payphone service through its telephone exchange service operations or its exchange access operations. Timely, responsive enforcement of provisions such as these will be necessary to promote the 1996 Act's goal of fostering competitive telecommunications markets.

18. We tentatively concluded in the *NPRM* that the provisions of the 1996 Act that specifically refer to complaint procedures do not diminish the Commission's broad authority to investigate formal complaints under section 208. AT&T, the sole commenter to address this issue, agrees with our tentative conclusion, explaining that section 261(a) states that:

nothing in this part [Part II] shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996 in fulfilling the requirements of this part, to the extent that such regulations are not inconsistent with the provisions of this part.

According to AT&T, specific references in the Act to the Commission's duties to resolve formal complaints under section 271 and elsewhere in the Act affect only the time in which such matters must be decided, but do not affect the Commission's existing authority under section 208.

19. We find that Congress' actions in specifying certain complaint procedures and deadlines for those procedures do not restrict the Commission's authority to resolve formal complaints pursuant to section 208. Section 261 is entitled, ''Effect on Other Requirements'' and subsection (a) indicates Congress'' intent to leave intact the Commission's authority except where it would be inconsistent with the Act itself. We conclude that any references to complaint resolution deadlines in Title II of the Act are intended to affect only the time in which specific matters must be decided, and do not decrease the Commission's existing authority under section 208.

III. Amendments to Rules of Practice and Procedure

A. Overview

20. The focus of this proceeding is on establishing rules and procedures to implement the expedited complaint provisions set forth by the 1996 Act and to speed the resolution of all formal complaints in accordance with the pro-competitive policies underlying the 1996 Act. Three objectives form the basis for the amendment of the formal complaint rules, which focus on settlement efforts, enhanced pleading content, and streamlined procedures.

21. Our first objective is to promote settlement efforts to enable parties to resolve disputes on their own before resorting to adjudication before the Commission. We conclude that more dialogue between parties prior to the complaint process will reduce, and in some cases, eliminate, the need to file formal complaints with the Commission. Consequently, we require complainants and defendant carriers to

certify in their respective complaints and answers that the possibility of settlement was discussed before the complaint was filed with the Commission. Certification of settlement attempts will promote pre-filing discussions and information exchanges among the disputing parties. In situations in which disputes are not resolved, we expect that pre-filing discussions and information exchanges will enable parties to narrow the number and scope of the issues to be presented to the Commission for resolution under the expedited complaint procedures.

22. Our second objective is to improve the utility and content of pleadings, so that the complaint, answer, and any necessary reply may serve as the principal basis upon which the Commission will make a decision on the merits of the complaint. Under the format and content rules, absent a waiver for good cause shown, complainants and defendants must make factual allegations in their pleadings and supply documentation to support such facts. To the extent that the Commission determines that additional information is needed in the record to resolve a complaint fully, the parties will be required to respond quickly.

23. Our third objective is to streamline the formal complaint process by eliminating or limiting procedural devices and pleading opportunities that have contributed to undue delays in formal complaints. For example, we conclude that we should modify discovery to increase staff control over the process and limit the filing, timing, and scope of briefs, as well as streamline the service process by having complainants serve complaints directly on defendants. In addition, we eliminate certain pleading opportunities that have been of little value to the complaint resolution process, including cross-complaints, counterclaims, motions to make a complaint definite and certain, and amendments to complaints.

24. To advance these three objectives, we have designed rules to speed the processing of all formal complaints. By encouraging dialogue among the parties prior to the filing of formal complaints, many conflicts will be settled and those complaints that are filed will have been narrowed in scope. By requiring initial pleadings to contain complete information and documentation, the parties and the Commission will be better prepared to resolve disputed issues at an early stage of the complaint process. And finally, by streamlining and eliminating unnecessary pleading opportunities, the parties and the Commission will be able to focus early on the essential activities and information needed to more quickly resolve formal complaints.

B. Applicability of the Rules

1. Uniform Application of the Rules. a. The *NPRM.* 25. In the *NPRM,* we tentatively concluded that the pro-competitive goals and policies underlying the short complaint resolution deadlines in the Act should apply to all formal complaints, not just to those specifically added or amended by the 1996 Act. The *NPRM* proposed to implement uniform procedures and pleading requirements to expedite the resolution of all formal complaints and sought comment on the need for specialized rules or procedures for handling complaints arising under particular provisions of the Act.

b. Comments. 26. BellSouth supports applying the same procedures to all formal complaints and the National Association for the Deaf (''NAD'') agrees, stating that separate sets of procedures could be confusing for complainants. The majority of parties commenting on this issue, however, argue for special expedited procedures for those complaints that are subject to specific statutory deadlines, with other complaints proceeding under more relaxed or flexible timetables. American Public Communications Council (''APCC'') expresses concern that the new procedures will place significant burdens on complainants and defendants. Cincinnati Bell Telephone (''CBT'') states that sections 260(b), 271(d)(6)(B), and 275(c), which require complaints to be resolved under ninety or 120-day deadlines, involve very specialized subject matters, while section 208 complaints may involve any aspect of telecommunications and therefore parties to section 208 complaints may need more time to develop and resolve issues. GTE suggests using separate proceedings for ''fast-track'' cases, stating that the Commission should wait until it has gained more experience with application of the provisions of the 1996 Act before attempting to apply the same expedited procedures to all formal complaints.

27. Some commenters also urge the Commission to establish expedited procedures for those complaints that are not specifically covered by a statutory deadline but which, they argue, are needed to ensure full and fair competition. For example, MCI proposes expedited procedures for interconnection-related complaints pursuant to sections 251 and 252 of the Act. Telecommunications Resellers Association (''TRA'') argues that complaints filed by resale carriers should be processed under expedited procedures because of the size and resource disparities between resellers and their underlying network service providers, and because of the unusual circumstances in which resellers have dual status as both customers and competitors of network service providers.

28. The NAD references its comments to the *Section 255 NOI,* 61 FR 50465 (September 26, 1996), in which it proposed that the Commission create procedures to coordinate with the Department of Justice (''DOJ'') to determine the appropriate governmental authority for reviewing complaints that arise out of a lack of access to telecommunications services for persons with disabilities. Such complaints could result either from the failure of a place of public accommodation or state or local governmental entity to follow the requirements of the Americans with Disabilities Act of 1990 (''ADA'') or from the failure of a telecommunications manufacturer or service provider to comply with section 255. The NAD states that its proposal will aid parties who file section 255 complaints that may raise jurisdictional issues.

c. Discussion. 29. We affirm our tentative conclusion that uniform streamlined procedures and pleading requirements should be applied to all formal complaints filed against common carriers, even those that are not subject to specific statutory deadlines, with the exception of complaints alleging violations of section 255. All formal complaints should be resolved as expeditiously as possible. We find that uniform procedures and pleading requirements will promote efficiency in the Commission's administration of complaints and will minimize confusion among the parties. Uniform procedures for all formal complaints will promote the Commission's goal of expediting the resolution of these disputes by allowing the Commission and all parties to follow one set of rules.

30. We disagree with the commenters who support expedited procedures only for complaints that have statutory deadlines or that involve competitive issues for the following reasons. First, we agree with NAD that having separate sets of procedures for certain types of complaints would create confusion for parties who might be unclear as to which rules to follow and might even lead to repeated and inadvertent violations of our procedural rules. Second, we conclude that separate complaint procedures would permit

parties to exploit our rules by alleging certain violations in order to manipulate the time frame or level of evidentiary support required in a particular complaint. For example, a complainant alleging that a BOC has violated certain provisions of the Act might be tempted to add an allegation that the BOC has also failed to meet a condition required for approval for provision of interLATA services in violation of section 271, in order to take advantage of the ninety-day resolution deadline mandated by section 271(d)(6)(B). Third, to the extent that certain commenters contend that subjecting all complaints to expedited procedures will unnecessarily work hardships on complainants and defendants in cases without statutory deadlines, we note that the Commission has considerable discretion under the amended rules to accommodate the needs of parties in cases where no statutory deadline applies. Finally, separate sets of procedures would be administratively burdensome for the Commission. Not only would it be cumbersome to promulgate separate sets of procedures, but it would decrease staff efficiency to apply different procedural rules to different complaints.

31. We defer consideration of NAD's proposal to establish coordination procedures with the DOJ regarding jurisdiction of accessibility complaints in this proceeding. We will address this proposal in our section 255 implementation rulemaking, so as to permit the Commission to take a comprehensive approach to implementation of section 255.

2. Applicability of the Section 208(b)(1) Deadline. a. The *NPRM.* 32. We stated in the *NPRM* that the new five-month resolution deadline in section 208(b)(1) applies only to those formal complaints that investigate the ''lawfulness of a charge, classification, regulation or practice.'' Section 208(b), as originally added by Congress in 1988 in the FCCAA, has been interpreted previously as applicable only to complaints about matters contained in tariffs filed with the Commission. In other words, under this interpretation, only those complaints challenging the ''lawfulness of a charge, classification, regulation or practice'' reflected in a tariff filed with the Commission pursuant to section 203 of the Act have been viewed as subject to the resolution deadlines contained in former section 208(b).

b. Comments. 33. Several commenters take a much broader view of the scope of section 208(b). According to these commenters, the five-month resolution deadline in section 208(b)(1), in the absence of a specific statutory resolution deadline such as in sections 260, 275, and 271, applies to all formal complaints filed pursuant to section 208. Although the commenters provide little argument to support this view, the crux of their claim appears to be that the language in section 208(b)(1) referring to ''investigation[s] into the lawfulness of a charge, classification, regulation or practice'' is broad enough to cover any unlawful act or omission by a common carrier which could subject it to a complaint filed pursuant to section 208. Under this broad interpretation of section 208(b)(1), the Commission would have a maximum of five months to resolve any formal complaint filed pursuant to section 208.

c. Discussion. 34. The plain language of the Act establishes that the class of complaints subject to the deadline in section 208(b)(1) is narrower than the class of complaints that can be filed under section 208(a). Section 208(a), *inter alia,* gives any person the right to complain about ''anything done or omitted to be done'' by a common carrier in contravention of the Act. The complaint resolution deadline in section 208(b)(1), on the other hand, refers only to those complaints involving investigations into the lawfulness of a ''charge, classification, regulation, or practice'' of a carrier.

35. While there is little guidance in section 208 itself for defining the subset of complaints covered by section 208(b), we conclude that section 208(b)(1) covers complaints relating to the lawfulness of those matters required to be in tariffs. Stated another way, the deadline covers complaints relating to the lawfulness of matters with respect to which the Commission could exercise its prescription power under section 205. The deadlines in sections 204(a)(2)(A) (pertaining to the nature and timing of tariff investigations by the Commission) and 208(b)(1) are identical in both the Act, as amended by the FCCAA, and the 1996 Act. In addition, the provision in the 1996 Act establishing the effective date for the changes to the tariff investigation and complaint resolution deadlines specifically states that the new deadlines in sections 204 and 208(b) shall apply only with respect to charges, practices, classifications, or regulations ''filed'' on or after one year after the date of enactment. The use of the word ''filed'' connotes a tariff filing pursuant to section 203 of the Act because it is generally pursuant to section 203 that a ''charge, classification, regulation, or practice'' would be ''filed'' with the Commission.

36. We note, moreover, that the 1996 Act added specific resolution deadlines for complaints filed pursuant to sections 260, 271, and 275. It may be inferred that, because Congress added specific deadlines in certain sections of the 1996 Act for resolving identified types of complaint actions, and was silent as to deadlines for resolving complaints arising from other sections of the Act, Congress did not intend to mandate deadlines for resolving all complaints.

37. We therefore conclude that section 208(b) applies only to formal complaints which involve ''investigation[s] into the lawfulness of a charge, classification, regulation or practice'' contained in tariffs filed with the Commission. In light of our complete detariffing policy for the domestic interstate, interexchange services of nondominant interexchange carriers and our permissive detariffing policy for competitive access providers and competitive LECs, however, we conclude that the interpretation should be modified to ensure that our forbearance decisions do not eviscerate Congress' intent in establishing the five-month resolution deadline for 208(b)(1) complaints. As noted above, the application of the 5-month 208(b)(1) deadline to investigations concerning a carrier's ''charge, classification, regulation, or practice'' is triggered by the filing of any such charge, classification, regulation or practice with the Commission. To the extent that our detariffing decisions relieve carriers of any obligations to make such filings, it could be argued that complaints about matters not filed with the Commission by carriers are not encompassed by section 208(b)(1). We conclude that Congress clearly did not intend this result. We hold, therefore, that the section 208(b)(1) deadline shall apply to any complaint about the lawfulness of matters included in tariffs filed with the Commission, and those matters that would have been included in tariffs but for the Commission's forbearance from tariff regulation. For example, complaints alleging that a carrier,through its non-tariffed charges, has failed to meet the rate integration or rate averaging requirements of section 254(g) of the Act would be subject to the section 208(b)(1) deadline. Similarly, complaints contending that a carrier has imposed unjust and unreasonable terms and conditions on the provision of a service that would have been tarrifed but for our forbearance decision would fall within the requirements of section 208(b)(1).

C. Pre-Filing Procedures and Activities

38. In the *NPRM* we asked parties to identify specific pre-filing activities available to potential complainants and

defendants that could serve to settle or narrow disputes, or facilitate the compilation and exchange of relevant documentation or other information prior to the filing of a formal complaint with the Commission. It has been our experience that there is generally little exchange of information or discussion of the dispute between parties prior to the filing of a formal complaint and that such exchange of information and discussion of a dispute will often lead to settlement. We stated in the *NPRM* that our intent was to adopt rules or procedures that would promote actions that could either foster the resolution of disputes prior to filing or narrow the scope of the issues to be resolved in formal complaints.

1. Certification of Settlement Attempts. a. The *NPRM.* 39. We tentatively concluded in the *NPRM* that we should require that a complainant certify in its complaint that it discussed, or attempted to discuss, in good faith the possibility of settlement with the defendant carrier's representative(s) prior to filing the complaint, and, further, that failure to comply with this certification requirement would result in dismissal of the complaint.

b. Comments. 40. Most commenters support the proposal to require a complainant to certify in its complaint that it discussed, or attempted to discuss, the possibility of settlement with the defendant carrier prior to filing its complaint. These commenters agree that settlement should be encouraged and that the certification requirement would provide an additional incentive for parties to settle or narrow disputed issues, thereby resulting in fewer and better-focused complaints. GST Telecom, Inc. (''GST''), KMC Telecom, Inc. (''KMC''), MFS Communications, Co. (''MFS''), and TRA additionally suggest that answers should be required to contain certification that the parties discussed, or attempted to discuss, the possibility of settlement prior to the filing of the formal complaint. In their Joint Reply, Jones Intercable, Inc., Centennial Cellular Corp., Texas Cable and Telecommunications Association, Cable Television Association of Georgia, South Carolina Cable Television Association, and Tennessee Cable Telecommunications Association (collectively, the ''Cable Entities'') recommend mirroring the Commission's pole attachment procedures, which require a complaint to either summarize all steps taken to resolve the dispute prior to filing or explain why no steps were taken. AT&T opposes such a pre-certification requirement, arguing that it would unduly restrict a party's ''unconditional statutory right'' to file a section 208 complaint, citing *AT&T* v. *FCC* as support for its proposition. BellSouth disagrees with AT&T, arguing that there is no section 208 right to file a complaint that is not based on facts, and that encouraging pre-complaint negotiations will facilitate all parties' understanding of the facts. Bell Atlantic, NYNEX, and Pacific Telesis Group (''PTG'') also disagree with AT&T's argument, stating that *AT&T* v. *FCC* deals only with the Commission's prohibition of tariff revisions for certain services and does not deal with section 208 complaints. Competitive Telecommunications Association (''CompTel'') opposes the requirement of certification of settlement attempts, arguing that parties already have sufficient motivation to settle their disputes and that mandatory settlement discussions might force some parties to accept unfavorable settlements.

c. Discussion. 41. We conclude that both the complainant and defendant, as part of the complaint and answer, respectively, must certify that they discussed, or attempted in good faith to discuss, the possibility of settlement with the opposing party prior to the filing of the complaint. We agree with GST, KMC, MFS, and TRA that defendant carriers should be given equal responsibility for exploring settlement options prior to the filing of a formal complaint. To help facilitate meaningful discussion between disputing parties, we will adopt a requirement that the complainant mail a certified letter outlining the allegations that form the basis of the complaint it anticipates filing with the Commission to the defendant carrier that invites a response within a reasonable period of time. We further conclude that the rule setting forth the certification requirement shall be modeled on the Commission's existing pole attachment procedures in § 1.1404(i) of the rules. Therefore, each settlement certification must include a brief summary of all steps taken to resolve the dispute prior to filing. If no steps are taken, then each such certification must state the reason(s) for such failure to conduct settlement discussions. We find that mandating settlement discussions prior to filing a formal complaint will result in (1) more disputes being settled amicably, and (2) the scope of the issues in dispute in formal complaints being narrowed where possible.

42. We disagree with CompTel's assertion that a rule requiring mandatory settlement discussions could be used to coerce parties into accepting unfavorable settlements. This rule requires good faith settlement *attempts,* not settlement itself. Furthermore, requiring good faith settlement attempts will not impose undue restrictions on the right of any person to file a complaint with the Commission. We disagree with AT&T's interpretation of the ruling in *AT&T* v. *FCC* as it applies to the issues under consideration here. In *AT&T* v. *FCC,* the court held that the Commission's requirement that a carrier obtain special permission, *i.e.,* prior Commission approval, before filing a tariff under section 203 unlawfully interfered with the carrier's right to file a tariff. In addition to the fact that *AT&T* v. *FCC* considers the application of section 203, not section 208, the issue considered in *AT&T* v. *FCC* is distinguishable from the issue before us in that the pre-filing requirements we impose here only dictate that parties explore settlement possibilities and do not require any Commission approval prior to filing a formal complaint. If settlement attempts are unsuccessful, the complainant is free to file a formal complaint. The certification requirement will benefit the parties and the Commission by requiring the parties to discuss the facts and issues in dispute prior to the filing of the complaint. Such requirement may, therefore, lead to an informal resolution of the dispute or, at the very least, may reduce or clarify the number and scope of the issues in dispute, consistent with Congress' intent to expedite the resolution of disputes.

2. Neutral Industry Committee. a. The *NPRM*. 43. We also sought comment on whether a committee composed of neutral industry members would serve a needed role or useful purpose in addressing disputes over technical and other business disputes, before parties bring their disputes to the Commission in the form of formal complaints. We asked commenters to address the extent to which there would be a need for outside experts to deal with technical issues that are likely to arise in formal complaints and whether, if such a need exists, the use of a committee of such experts in the form of a voluntary preliminary alternative dispute resolution (''ADR'') procedure would expedite the resolution of complaints

b. Comments. 44. Most commenters oppose the creation of an industry committee. Several parties argue that it would be impossible to construct a neutral committee, PTG and TRA argue that the use of such a committee would delay the resolution of important marketplace issues, and AT&T and GTE argue that the committee would lack the expertise to handle a wide variety of disputes. CBT, Communications and Energy Dispute Resolution Associates (''CEDRA''), and NYNEX contend that such options are already available to parties. NYNEX additionally states that complaints before the Commission typically involve disputes between individual companies, rather than broad issues affecting the industry. Some commenters, however, support the proposal. Association of Telemessaging Services International (''ATSI''), BellSouth, Southwestern Bell Telephone (''SWBT''), and United States Telephone Association (''USTA'') support the use of an industry committee to assist in resolving technical and business disputes. BellSouth added that an industry committee could be used in conjunction with ADR mechanisms. ATSI asserts that committee proceedings would have to be completed within clearly established deadlines to prevent delay in resolving disputes involving competitive issues and to ensure compliance with the statutory complaint resolution deadlines. In addition, GST, KMC, and MFS suggest permitting the parties and the Commission to utilize such a committee during the complaint process, as well as at the pre-filing stage, to resolve certain factual issues.

c. Discussion. 45. We decline to establish a committee of neutral industry members to resolve disputes over technical and other business issues, before parties file such disputes with the Commission as formal complaints. We note that the majority of commenters oppose this proposal. Several factors weigh against establishing such a committee. First, because the committee's decisions would not be binding on the Commission, it is possible that the committee and the Commission might rule differently on identical issues. The usefulness of committee decisions to resolve disputes would be diminished by such uncertainty, as a losing party would have little incentive to accept the committee's recommendation. Second, we agree with commenters that it would be difficult to establish a standing committee with sufficient expertise to resolve a range of technical and business issues because of the breadth of knowledge and expertise that would be required. Third, we agree with commenters that it would be administratively burdensome to assemble a new committee for each conflict parties sought to submit to such committee. Finally, we agree with the commenters who argue that the potential for conflicts of interest among the committee members is too great to be able to provide a guarantee of neutrality.

3. Additional Commenters' Suggestions. a. The *NPRM* 46. In the *NPRM,* we invited commenters to suggest additional pre-filing requirements or procedures to help settle or narrow disputes, or facilitate the compilation and exchange of relevant documentation or other information.

b. Comments. 47. ATSI, NYNEX, and USTA suggest that formal ADR efforts be made a prerequisite to filing a complaint, while MCI and Sprint oppose such a proposal. MCI, ICG Telecom Group (''ICG''), and Sprint suggest that parties be required to begin their information exchange before a complaint is filed, in order to prepare for the rapid pace of the complaint process. PTG opposes this suggestion, arguing that requiring such information exchanges would lead to fishing expeditions and raise confidentiality concerns. Bell Atlantic proposes that a potential complainant be required to provide the defendant carrier with a statement of its claim and specify documents and information that it believes would be material to the resolution of the dispute, and that the carrier be required to respond in full within a reasonable period of time before a complaint is filed. Similarly, CEDRA and BellSouth suggest that complainants be required to serve advance copies of their complaints on defendant carriers prior to filing such complaints with the Commission. Finally, CompTel, Nextlink and various cable entities suggest that the Commission offer binding arbitration or mediation as an alternative to formal complaints, arguing that Commission staff would be more persuasive and knowledgeable than outside mediators or arbitrators.

c. Discussion. 48. We decline to adopt these proposals because, for the most part, they raise potential problems that would outweigh their potential benefits. We reject suggestions that would impose rigid requirements for pre-filing activities. We find that these proposals could either stifle the parties' ability to develop creative solutions to their differences or delay unnecessarily the filing of complaints, or both. For example, we agree with MCI and Sprint that requiring formal ADR efforts prior to the filing of a formal complaint could permit defendant carriers to delay the filing of formal complaints to the detriment of customers and competitors alike. For the same reason, we reject the suggestions by MCI, ICG, and Sprint that we should mandate the exchange of documents and materials by potential complainants and defendant carriers prior to the filing of a formal complaint. Although the proposals of Bell Atlantic, BellSouth, and CEDRA, to require the exchange of specific information identifying claims and key facts in advance of the filing of the formal complaint, would promote pre-filing discussions, we conclude that parties should be afforded the widest possible latitude in conducting their settlement efforts and not be subjected to rigid requirements. We also reject the proposals of CompTel, Nextlink, and the cable entities to require the Commission to arbitrate or mediate disputes at the request of the disputing parties as an alternative to formal complaints. Such a requirement would unnecessarily tax the Commission's resources when there are many qualified ADR experts outside the Commission. We note that Commission staff will work with industry members and formal complaint parties to resolve disputes informally, both before and after formal complaints have been filed. We see little benefit, however, in requiring the staff to conduct such mediation or arbitration efforts in all cases.

D. Service

49. Under section 208 of the Act and the Commission's existing complaint rules, the staff is responsible for serving formal complaints on defendant carriers. Currently, all formal complaints must be initially filed with the Mellon Bank in Pittsburgh, Pennsylvania; forwarded by the Bank to the Commission's Secretary; and then distributed to the Common Carrier Bureau. The Common Carrier Bureau then forwards complaints against common carriers and complaints against international telecommunications providers to the Common Carrier Bureau's Enforcement Division; complaints against wireless carriers are forwarded to the Wireless Telecommunications Bureau. As a result, ten days or more may pass before the staff receives official copies of a complaint, reviews it for minimum compliance with the rules, and serves it on the defendant carrier(s). It has been common for a defendant carrier to receive a complaint twenty days after it was filed with the Commission. Pleadings filed subsequent to the complaint are currently served by regular U.S. mail, which may delay actual receipt of such pleadings from three days to a week. Because of the new ninety to 120-day statutory deadlines, the *NPRM* proposed to eliminate delays associated with the current filing and service procedures by streamlining the service process.

1. Personal Service of Formal Complaints on Defendants. a. The

NPRM. 50. In the *NPRM* we sought comment on our proposals to modify the service of formal complaints. We proposed to authorize or require a complainant to effect service simultaneously on the following persons: the defendant carrier, the Commission, and the appropriate staff office at the Commission, *i.e.*, the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau; the Chief, Compliance and Litigation Branch, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau; or the Chief, Telecommunications Division, International Bureau. With regard to service on the defendant, we proposed that a complainant would personally serve the complaint on an agent designated by the defendant carrier to receive such service. We proposed that the answer period would begin to run once the complaint has been served by the complainant on the defendant.

51. We also noted that requiring complainants to serve complaints directly on defendants would eliminate the staff's initial review of the complaint prior to the defendant's receipt of the complaint. To alleviate concerns about service of deficient complaints, the *NPRM* proposed to require that parties submit a completed checklist or ''intake'' form with each copy of the formal complaint to indicate: (1) that the complaint satisfies minimum format and content requirements; (2) that the complaint meets the various threshold requirements for stating a cause of action under the Act and the Commission's rules; and (3) the statutory provisions allegedly violated and any applicable statutory resolution deadline. We based this proposal on our belief that such an intake form could be a useful tool both to speed the preparation and filing of complaints and to avoid or reduce the time and resources involved in processing procedurally defective or substantively insufficient complaints. We further noted that the intake form could serve another useful purpose, by quickly identifying for the staff and defendant carrier the relevant statutory provisions and any associated statutory time constraints.

b. Comments. 52. The commenters generally support the proposal to require parties to serve complaints simultaneously on defendants, the Office of the Secretary, and the Bureau responsible for processing the complaint. BellSouth, GTE, and CBT, however, are concerned that defendants may be required to respond to deficient complaints if the Commission eliminates its practice of reviewing complaints prior to serving them on defendants. By contrast, MCI argues that Commission review of a complaint is unnecessary because a defendant would undoubtedly raise the issue if a complaint was deficient. CompTel suggests that the Commission send the defendant a notice of receipt of the complaint to safeguard against faulty service. BellSouth states that section 208(a) mandates that only the Commission may serve complaints on defendants, and suggests that the complainant serve the defendant with a copy of the complaint and notice of intent to file prior to the filing of the complaint with the Commission. AT&T and NYNEX state that, while section 208(a) does require the Commission to serve complaints on defendants, this requirement is fulfilled by allowing complainants to serve complaints on defendants as agents of the Commission for that limited purpose only. PTG asks the Commission to clarify that personal service is required for the complaint.

53. Almost all of the commenters, including ATSI, BellSouth, CBT, CompTel, GST, GTE, KMC, MFS, and TRA, support the proposal to require complainants to submit a completed checklist or ''intake'' form with each copy of the formal complaint. ATSI stated that using ''check-off boxes'' to clearly indicate the specific complaint category utilized would assist all parties and the Commission in determining quickly the special standards and applicable deadlines. BellSouth additionally suggests that the form include a waiver of the section 271(d)(6)(B) 90-day resolution deadline. MCI argues that this form would be useless because a party filing a defective complaint would be unlikely to complete this form correctly.

c. Discussion. 54. We conclude that complainants shall be required to effect personal service of the complaint on the defendant carrier/designated agent simultaneously with the filing of the complaint with the Commission's Secretary, the Chief of the division or branch responsible for handling the complaint within the Bureau responsible for handling the complaint, and the Mellon Bank. The complainant shall serve two copies of the complaint with the Chief of the division or branch responsible for handling the complaint within the Bureau responsible for handling the complaint. The Chief will then forward one of those copies to the defendant, in compliance with the mandate in section 208(a) that complaints ''shall be forwarded by the Commission'' to the defendant. The allowable time period for filing an answer begins to run on the date the complainant serves the complaint on the defendant. Because the Common Carrier Bureau coordinates with the International Bureau to handle international telecommunications complaints, any formal complaint that is filed with the International Bureau must also be filed simultaneously with the Chief, Formal Complaints Branch, Enforcement Division, Common Carrier Bureau. Requiring service of the complaint on the defendant carrier simultaneously with filing the complaint with the Commission will enable the parties and the Commission to begin prompt resolution of the complaint, by eliminating delays that existed under the former rules. This requirement satisfies the Commission's goal of expediting the processing of formal complaints.

55. After consideration of commenters' concerns regarding notice to the defendant in the event of defective service of the complaint, we conclude that the Commission will send each defendant notice of receipt of the complaint as a precaution against defective service. Upon receipt of the complaint, the Commission shall promptly send notice of receipt of the complaint by facsimile transmission to the defendant. In addition to mailing a copy of the complaint to the defendant, the staff will send to all parties a schedule detailing the date the answer is due and the date of the initial status conference. The date of service of the formal complaint upon the defendant shall be presumed to be the same date as service on the Commission. Where, however, a complainant fails to properly serve the complaint on the defendant, the complaint will be dismissed without prejudice.

56. We further conclude that the complainant must file the complaint, along with the appropriate fee, with the Mellon Bank on the same day that it serves the complaint on the Commission and the defendant. Although this requirement was not specifically proposed in the *NPRM*, we find that requiring the complaint to be filed with the Mellon Bank on the same day as service on the defendant and the Commission is a natural extension of the proposal in the *NPRM* to require simultaneous service of the complaint on the defendant and the Commission. Such requirement is further justified by the fact that the date on which the complaint is filed with the Mellon Bank is the official commencement date of the complaint with the Commission. Thus, the date on which the complaint is filed with the Mellon Bank is the date on which any statutory deadlines begin to

run and timely prosecution of such complaints requires service on the defendant at the earliest date possible. Additionally, requiring delivery of the complaint and fee payment to the Mellon Bank by the day of service of the complaint on the Commission and defendant will help the Commission to determine quickly whether the fee has been properly paid. We also require the complainant to attach to each copy of the intake form, a photocopy of its fee payment (check, etc.) as well as a certificate of service. Attachment of a copy of the fee payment will provide some assurance to the Commission and a defendant that payment was made. Where a fee is not properly paid, the Commission will notify both parties promptly that the complaint has been dismissed without prejudice.

57. BellSouth, GTE, and CBT raise some valid concerns about the possibility of defendants having to respond to deficient complaints under our new service requirements. To address these concerns, we require a complainant to submit a completed intake form with its formal complaint to indicate that the complaint satisfies the procedural and substantive requirements under the Act and our rules. The completed intake form shall identify all relevant statutory provisions, any relevant procedural history of the case, and, in the case of a section 271(d)(6)(B) complaint, whether the complainant desires to waive the ninety-day resolution deadline. We disagree with MCI's assertion that a complainant who files a defective complaint will probably be unable to fill out the intake form properly. Rather, we find that the intake form will serve as a checklist to guide complainants who may be unfamiliar with the necessary components of a formal complaint and in that way reduce the number of defective complaints filed. We conclude further that this requirement will permit the Commission to eliminate the delay associated with the initial review of a complaint. To the extent that frivolous complaints are filed, the intake form requirement will assist in weeding out such complaints prior to Commission review. The form will identify for the Commission staff any relevant statutory provisions and associated deadlines. Furthermore, the staff will be alerted if there is relevant procedural history that will require review of related non-Commission records by the staff. We note that a defendant is not relieved of its obligation to file and serve its answer on time by the fact that a complainant failed to correctly complete the intake form.

58. In addition, we reject NAD's proposal to permit service of complaints by facsimile transmission because we conclude that service of the complaint must be accomplished in the most reliable manner possible. Because we are requiring the defendant to submit its answer within twenty days of receipt of the complaint, any delay or uncertainty in the receipt of the complaint and associated documents through facsimile transmission could unduly infringe on the defendant's due process rights.

2. Expediting Service Generally. a. The *NPRM. 59. In the NPRM,* we proposed to require service of all documents filed subsequent to the complaint (answer, motions, briefs, etc.) by overnight delivery. Alternatively, parties would be permitted to serve pleadings by facsimile transmission, to be followed by hard copies sent by regular mail delivery.

60. We further proposed to establish and maintain an electronic directory, available on the Internet, of agents authorized to receive service of complaints on behalf of carriers that are subject to the provisions of the Act and of the relevant Commission personnel who must be served. We noted that section 413 of the Act requires all carriers subject to the Act to designate in writing an agent in the District of Columbia for service of all process. The proposed directory would list, in addition to the name and address of the agent, at least one of the following: his or her telephone or voice-mail number, facsimile number, or Internet e-mail address. We sought comment on this proposal and on what information should be included within the service directory.

61. Finally, we recognized that the practice of routing formal complaints against wireless telecommunications providers was unwieldy and time-consuming. We noted that under the current rules, wireless complaints are routed from the Common Carrier Bureau lock box at the Mellon Bank in Pittsburgh to the Commission's Secretary, who forwards the complaint to the Formal Complaints and Investigations Branch of the Common Carrier Bureau's Enforcement Division, which then reviews and forwards the complaints to the Wireless Telecommunications Bureau. Therefore, we sought comment on our proposal to revise our rules to provide for a separate lock box at the Mellon Bank for the receipt of complaints against wireless telecommunications service providers.

b. Comments. 62. Commenters strongly support these proposals. BellSouth suggests that facsimile service would be facilitated by requiring pleading signature blocks to include facsimile and phone numbers. SWBT additionally suggests that service include delivery by certified mail. ICG argues that service should be by hand delivery or overnight mail only. GST, KMC, MFS, and NAD suggest permitting service by Internet, with NAD particularly encouraging Internet or facsimile service of complaints and related documents to facilitate service by consumers with disabilities. CBT opposes service by Internet because of technical difficulties and problems with verification. CBT asks the Commission to clarify that it will take responsibility for updating the electronic directory and make allowances for improper service due to mistakes in the directory. America's Carriers Telecommunication Association (''ACTA'') suggests that carriers be able to designate someone other than an agent located in the District of Columbia for receipt of service, arguing that limiting service to what in many cases will be an ''artificial agent'' in the District of Columbia is inefficient in light of the availability of national overnight delivery. MCI suggests that a paper directory of service agents be kept in the Secretary's office for those parties lacking Internet access.

c. Discussion. 63. We conclude that parties must serve documents or pleadings filed subsequent to the complaint by either hand delivery, overnight delivery, or facsimile transmission followed by mail delivery. Any facsimile transmission or hand delivery must be completed by 5:30 p.m., local time of the recipient, in order to be considered served on the date of receipt. Service by overnight delivery will be deemed served the business day following the date it is accepted for overnight delivery by a reputable overnight delivery service. Although we are permitting service of pleadings subsequent to the complaint to be by facsimile transmission, we also require that facsimile service be accompanied by mailed hard copies to alleviate the effects of possible faulty facsimile transmission. These requirements will ensure timely and verifiable service. To facilitate facsimile delivery, we require pleading signature blocks to include facsimile and telephone numbers, as suggested by BellSouth.

64. We decline to authorize service by Internet at this time because we have received insufficient comments on the issue, given the significance of permitting electronic filing or service of complaint pleadings. We may revisit this issue at a later date, following our consideration of possible procedures for

the electronic filing of documents in rulemaking proceedings in GC Docket 97–113.

65. We also reject SWBT's proposal to deliver pleadings by certified mail. Although SWBT presumably offered this suggestion to improve verification of service rather than speed of service, we did not seek comment on verification procedures in the *NPRM* because we have not found verification of service to be a significant problem.

66. Although we considered establishing an electronic directory of agents designated by carriers to receive service of process, we decline to establish such a directory at this time. We have concluded that more review is needed to determine the most efficient means for collecting the data necessary to establish such a directory. This data collection may be combined with other collections of data from common carriers by the Commission in the future. The Commission intends to reconsider this issue in conjunction with streamlining its other data collection procedures.

67. We recognize the need to provide complainants with the information necessary to effect personal service on defendant carriers as required by our rules. Accordingly, the Commission will provide access to a listing of agents designated by carriers to receive service of process in the Office of the Commission Secretary. In order to establish this listing, all common carriers are required to designate service agents within the District of Columbia, although they may additionally identify an alternative service agent outside the District of Columbia. For each designated agent for service of process, each carrier is required to identify its name, address, telephone or voice-mail number, facsimile number, and Internet e-mail address if available. In addition, the carrier shall identify any other names by which it is known or under which it does business, and, if the carrier is an affiliated company, its parent, holding, or management company. This information shall be provided to the Commission by filing it with the Formal Complaints and Investigations Branch of the Common Carrier Bureau. Parties are required to notify the Commission within one week of any changes in their information. We note that ACTA's proposal to permit designation of service agents outside of the District of Columbia was based on the incorrect premise that overnight delivery would fulfill our requirement of having the complainant personally serve the complaint on the defendant. It will not. Only hand delivery constitutes personal service for the purposes of our service requirement. We note, however, that the complainant is not required to hand deliver the complaint to the Commission Secretary, the Chief of the division or branch responsible for handling the complaint within the Bureau responsible for handling the complaint, or the Mellon Bank.

68. We establish a separate lock box at the Mellon Bank in Pittsburgh for the receipt of complaints against wireless telecommunications service providers. Currently, all formal complaints against common carriers, including Wireless Telecommunications Bureau complaints and International Bureau complaints, are filed in the lockbox of the Common Carrier Bureau at the Mellon Bank. Because the Common Carrier Bureau coordinates with the International Bureau to handle international telecommunications complaints, filing the International Bureau's complaints in the Common Carrier Bureau's lockbox does not delay the complaint process. Providing the Wireless Telecommunications Bureau with its own lockbox, however, will both expedite the delivery of the complaint and verification of fee payment to the Wireless Telecommunications Bureau, and relieve the Common Carrier Bureau of the responsibility of reviewing wireless complaints for routing to the Wireless Telecommunications Bureau.

E. Format and Content Requirements

69. The short resolution deadlines contained in the Act place greater burdens on parties to provide facts and legal arguments in their respective complaints and answers to support or defend against allegations of misconduct by common carriers. Similarly, the short resolution deadlines place greater demands on the Commission and its staff to expedite the review and disposition of these complaints.

70. The Commission's rules have always required fact-based pleadings. That is, all complaints, answers and related pleadings are required to contain complete statements of fact, supported by relevant documentation and affidavits. In actual practice, however, many parties file what amount to ''notice'' pleadings similar to filings that would be made in federal district court. Both complainants and defendants have placed substantial reliance on self-executing discovery and additional briefing opportunities to present their respective claims and defenses to the Commission.

71. A principal goal of this rulemaking that was set forth in the *NPRM* was to improve the utility and content of the complaint and answer by requiring complainants and defendants to exercise diligence in compiling and submitting full legal and factual support in their initial filings with the Commission. The proposals in the *NPRM* were designed to promote fact-based pleadings and to shift the focus of fact-finding away from costly, time-consuming discovery and towards the pre-filing and initial complaint and answer periods.

1. Support and Documentation of Pleadings. a. The NPRM. 72. In the *NPRM*, we proposed to require that any party to a formal complaint proceeding must, in its complaint, answer, or any other pleading required during the complaint process, include full statements of relevant facts and attach to such pleadings supporting documentation and affidavits of persons attesting to the accuracy of the facts stated in the pleadings. This would effectively prohibit defendants from making general denials in their answers. We proposed to require a complainant to append to its complaint documents and other materials to support the underlying allegations and requests for relief, and tentatively concluded that failure to append such documentation would result in summary dismissal of the complaint. Although our rules already required each complainant to provide a complete statement of the facts and description of the nature of the alleged violation, we tentatively concluded that we should require more specifically that a complainant include a detailed explanation of the manner in which a defendant has violated the Act, Commission order, or Commission rule in question in the formal complaint. Such a rule, for example, would require a complainant alleging that a BOC has ceased to meet any of the conditions that were required for approval to provide interLATA services pursuant to section 271(c)(2)(B) of the Act to include in its complaint a detailed explanation of the manner in which the defendant BOC has ceased to meet such condition or conditions, along with any associated documentation. The *NPRM* also sought comment on whether we should prohibit complaints that rely solely on assertions based on ''information and belief.'' We stated that, while assertions based on information and belief may not be useful in deciding on the merits of a complaint, prohibiting such assertions might inhibit a complainant's ability to present claims of unlawful behavior against carriers under applicable provisions of the Act.

73. We proposed to require the complaint, answer, and any authorized reply include two sets of additional information: (1) the name, address, and

telephone number of each individual likely to have discoverable information relevant to the disputed facts alleged with particularity in the pleadings, identifying the subjects of information; and (2) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the disputed facts alleged with particularity in the pleadings. We noted that this proposal, which would enable the Commission and parties to identify quickly sources of information, comported with an analogous requirement under the Federal Rules of Civil Procedure. We also sought comment on what benefits, if any, would be realized by the parties or the Commission by requiring the identified relevant documents to be filed with the Commission along with the complaint and answers.

74. The *NPRM* proposed to require parties to append copies of relevant tariffs or tariff provisions to their complaints, answers, and replies, noting that the current rules only encourage parties to append such tariffs. The *NPRM* also proposed to modify the rules to include expressly pleadings filed solely to effect delay in the prosecution or disposition of a complaint as filings for improper purpose within the meaning of § 1.734 of our rules.

b. Comments. 75. Most commenters, including AT&T, BellSouth and TRA, strongly support the proposals to require all pleadings to include complete facts and documentation. AT&T states that supporting affidavits and documentation are ''critical to understanding the parties' positions on the matters at issue.'' NYNEX agrees with the observation in the *NPRM* that ''[t]ypically, complainants file 'bare bones' complaints with numerous allegations, but with little or no documentation'' and that the proposal would allow the Commission to ''process complaints more quickly, since it would have access to the relevant information from the beginning[.]'' BellSouth suggests that the Commission impose requirements similar to its rules for pole attachment complaints which require detailed, fact-based complaints, supported by extensive documentation and verifications detailing the alleged violations.

76. Several commenters, including CBT, NYNEX, and PTG, only support our proposals regarding complaints, and oppose our proposals regarding answers. They state that the format and content proposals for complaints are not overly burdensome because complainants control the timing of the filing of the complaint and can gather information prior to bringing the complaint. They oppose the format and content proposals with regard to answers, however, because they argue that the requirements will be too onerous for defendants who will have little time to respond with such specificity in their answers, especially in light of our proposal to reduce the time to file answers to twenty days.

77. AT&T agrees that general denials should be prohibited. MCI, however, contends that general denials should be permitted where a complainant has been uncooperative with the defendant prior to the filing of the complaint and the defendant lacks the necessary information upon which to respond to the complaint in detail. The cable entities state that general denials should be permitted in accordance with the Federal Rules of Civil Procedure (''FRCP''), subject to Rule 11 sanctions, if the party intends in good faith to controvert all the averments of a pleading or specific paragraph.

78. AT&T and PTG endorse the proposal to prohibit assertions based solely on information and belief, stating that it would help to reduce the number of frivolous complaints, including those brought to harass defendants or as fishing expeditions. Many commenters, however, including APCC, Bell Atlantic, CompTel, MCI, NYNEX, NAD, TRA, and Teleport Communications Group (''TCG''), argue that allowances should be made for situations in which a complainant will have difficulty obtaining access to information that may be in the sole possession of a defendant or third parties who might be unwilling to relinquish such information. APCC, GTE, ICG, and TCG propose that information and belief allegations should be permitted if the complainant pleads with particularity facts that would establish a credible case, or supplies affidavits stating that the necessary information is in the possession of the defendant or an uncooperative third party. ATSI, KMC, and MFS oppose the proposal because of the potential hardship on small or emerging businesses. APCC and ICG also seek clarification on whether the Commission's proposal is to prohibit complaints based solely on information and belief, or only those allegations based solely on information and belief.

79. AT&T and PTG note that the identification of individuals with discoverable information should not include phone numbers because such individuals should be contacted only through counsel. Regarding the document production proposal, Bechtel & Cole and Ameritech support requiring all relevant documents to be produced to the opposing party and the Commission. Most commenters, however, such as CBT, BellSouth, MCI, the cable entities, and PTG, express concern that the information produced might be overbroad and argue that requiring the filing of numerous documents with only tangential relevance to the dispute is likely to overwhelm the Commission with materials of marginal or no use in resolving the complaint. CBT notes that many federal courts have opted out of compliance with the federal rule and that it would be more efficient to respond to discovery requests than to identify and gather the universe of available information. MCI questions whether this requirement will be useful, stating that a party would identify as relevant only those documents already attached as documents upon which that party intends to rely and that party would be unable to guess at what materials another party might find relevant. ACTA, BellSouth, and GTE propose requiring parties to file only the documents relied upon concurrently with the complaint and answer and any subsequently filed brief, rather than requiring the production of all potentially relevant documents. GST, KMC, and MFS argue that, to prevent the copying of millions of unnecessary documents, parties should only be required to identify documents and provide the opportunity to copy such documents. AT&T supports the identification or attachment of documents to complaints and answers only with respect to section 271(d)(6)(B) complaints; otherwise, AT&T argues, all document production should occur at the initial status conference. CBT, NYNEX, and SWBT express concern that defendants will not have time to execute document identification and production of this broad scope. Bell Atlantic states that, because the Commission seldom permits depositions or broad document searches, the provision of this information would rarely be utilized. PTG and USTA suggest that parties be allowed to amend their information designations without leave. Several parties, including MCI, express doubt that such information disclosure requirements could entirely substitute for discovery.

80. All commenters who discussed the proposal to require parties to append copies of relevant tariffs or tariff provisions to their complaints, answers, and replies support the proposal. No parties commented on the proposal, to include expressly within the meaning of

§ 1.734 of our rules, that pleadings filed solely to effect delay in the prosecution or disposition of a complaint are filings for improper purpose.

c. Discussion. 81. We conclude that the complaint, answer, reply, and any other required pleading are required to include full statements of relevant, material facts with supporting affidavits and documentation. This requirement will improve the utility and content of pleadings by requiring parties to plead their cases with specific, material facts and supply documentation early in the complaint process. In order to speed resolution of all formal complaints, the Commission must adhere to the fact-pleading process. Such quick resolution of certain formal complaints is necessitated by the Act. Further, such quick resolution of all formal complaints where possible is consistent with the overall goals of the Act to promote and protect competition in the marketplace.

82. We conclude that complainants shall be required to provide, in their complaints, a detailed explanation of the manner in which a defendant has violated the Act, Commission order, or Commission rule in question. Substantive claims, or ''counts,'' based solely upon information and belief shall be generally prohibited. A complainant may be permitted, however, to file claims based on information and belief if such claims are made in good faith and the complainant attaches an affidavit to the complaint that explains why the supporting facts could not be reasonably ascertained. Our goal is to discourage complainants from filing claims based solely upon information and belief without firsthand knowledge of the violation alleged. Because quick resolution of formal complaints is essential to the Commission's goal of fostering and preserving competition in today's deregulated telecommunications markets, strict adherence to the Commission's fact pleading requirements is necessary. A general rule prohibiting assertions based solely upon information and belief will ensure that complainants exercise diligence in preparing and submitting allegations of misconduct against a carrier. We have considered, however, commenters' concerns that complainants may not always have in their possession the information that would substantiate their claims and that such information may be in the sole possession or control of the defendant carrier or of uncooperative third parties. Each complainant has the general duty to provide, whenever possible, full statements of fact supported by relevant documentation and affidavits. Complainants should not, however, be penalized or prevented from filing a formal complaint in those situations in which the necessary information could not have been reasonably obtained prior to the filing of the complaint. We conclude that this requirement strikes an equitable balance between the Commission's need for complete information as early as possible, and the complainant's potential difficulty in obtaining that information.

83. We disagree with the comments of the cable entities that defendants should be permitted to make general denials if the defendant intends in good faith to controvert all the averments of a pleading or specific paragraph. Requiring the answer to include full statements of relevant, material facts with supporting affidavits and documentation will prohibit defendants from making general denials in their answers. Specific denials supported by facts and documentation will aid the Commission staff in understanding the nature of the dispute and facilitate its resolution. Formal complaints often raise questions about a rate, charge, term or condition of a particular service offering. In our staff's experience, defendant carriers have the requisite knowledge to specifically deny a complainant's allegations about such charges, practices or service requirements in the vast majority of cases. A diligent defendant should almost always have sufficient information with which to make specific denials. We conclude further that, contrary to MCI's suggestion, the benefits to speedy resolution of a complaint that arise from specific denials outweigh the potential benefit of allowing general denials as a mechanism to enforce compliance with the pre-filing activities requirements.

84. We conclude that parties must include in the complaint, answer, and any necessary reply, an ''information designation'' that identifies individuals known or believed by the parties to have knowledge about the matters in dispute. This information designation must identify such individuals by name and business or other address and include a description of the information possessed by that source and its relevance to the dispute. We conclude that such mandatory information designation will simplify, expedite, and, in some cases, eliminate the need for time-consuming discovery. We agree with AT&T and PTG that parties should not be required to supply the phone numbers of individuals who should only be contacted through counsel. Therefore parties are required to identify in the complaint, answer, and any necessary reply only the name and address of each individual likely to have discoverable information relevant to the disputed facts alleged with particularity in the pleadings.

85. We conclude further that parties shall also be required to identify in their information designations all documents in their possession or control believed to be relevant to the matters in dispute, including an inventory that contains for each document the date, the source, the intended recipient(s), and a description of the document's relevance to the dispute. We disagree with MCI's assertion that parties will be unable to guess what kinds of material the opposing party would regard as relevant. In most cases, parties to formal complaints before the Commission are sophisticated business entities who fully understand the issues before them and know which documents in their possession or control are relevant to those issues. We find CBT's arguments that many federal courts have opted out of compliance with this rule's equivalent in the FRCP unpersuasive. We note that, while we looked to the FRCP for some guidance during this proceeding, that guidance was limited by the many differences between federal court proceedings and Commission proceedings. Not only does the Commission require fact-based pleadings, but certain of the Commission's formal complaint proceedings are subject to statutory resolution deadlines shorter than any deadline applicable to the federal courts. Although some federal courts have opted out of compliance with FRCP 26(a)(1), we adopt its equivalent for Commission proceedings because it will aid us greatly in meeting statutory deadlines under our individual procedural constraints as well as in expediting the resolution of competitive issues that affect the telecommunications marketplace.

86. We disagree with CBT's statement that it would be more efficient to have parties respond to discovery requests than to have parties identify all relevant documents in their information designations. We find that requiring such information designations early in the dispute will facilitate the Commission's ability to focus on the facts and issues in the case quickly. Having such information on hand will further expedite the Commission's consideration of the necessity of any discovery requests early in the proceeding. We also disagree with the suggestions by PTG and USTA to permit parties to amend their information designations without leave. We conclude that this would run contrary to

our objective of procuring as much information as early as possible. The allowance of amendments would reduce parties' incentives to file thorough information designations with their complaints, answers, and replies because they will rely on their right to supplement their designations at a later time. Accepting routinely late-obtained information will only delay the resolution of complaints. We do recognize, however, that parties may occasionally, after submitting their initial pleadings, discover information that should be included in their information designations. Accordingly, a party may submit a request for permission to amend its information designations, along with an explanation of why the information was not designated at the time of the filing of the complaint, answer, or reply.

87. We do not find it necessary to require the production or exchange of all documents identified as relevant to a dispute as a matter of course in all cases. It will be helpful and often necessary, however, in light of the Act's complaint resolution deadlines and the Commission's goal of expediting the resolution of all complaints, to have certain documents identified by the parties readily accessible to the staff and opposing parties. Therefore we require parties to file concurrently with the complaint, answer, and any necessary reply, only those documents and affidavits upon which they intend to rely to support their respective claims and defenses. Required attachments include relevant tariffs or tariff provisions where applicable. Because it is in each party's self-interest to support its most persuasive arguments, we conclude that it is reasonable to rely on each party's judgment to identify the key documents in the dispute. We acknowledge that a party may be reluctant to divulge information that would weaken its case, and, therefore, would probably not attach such information to its complaint, answer, or reply. We conclude that this concern can be adequately addressed by requiring each party to identify all such information in their information designations, however, and opposing parties will therefore be aware of, and have subsequent opportunity to request, such information at the initial status conference.

88. We conclude that each party shall be required to attach supporting affidavits and documents to any allowed briefs, along with a full explanation in the brief of the material's relevance to the issues and matters in dispute. Such attachments shall have been previously identified in the parties' information designations, but need not have been attached to the complaint, answer, or any necessary reply. We find that this strikes an appropriate balance between the needs of the Commission and opposing parties to have readily available information and the hardships of producing unnecessary materials. We agree with PTG and USTA that parties may, despite good faith efforts to file complete submissions, later acquire documents or information upon which they wish to rely but which they did not identify as relevant information in their information designations. Therefore we permit a party to attach such subsequently obtained documents, upon which the party intends to rely, to any subsequent brief filed in the matter, provided it is accompanied by a full explanation in the brief of the material's relevance to the issues and matters in dispute and why such material was not identified in the party's information designation.

89. We disagree with AT&T's suggestion that all document production should occur at the initial status conference, except in section 271(d)(6)(B) complaints under 90-day resolution deadlines. This document production requirement is intended to work in conjunction with the other requirements adopted in this rulemaking, including the requirement that parties discuss, before the initial status conference, issues such as settlement prospects and stipulations of facts and disputed facts. It is essential that parties be able to review the documents produced with the initial pleadings in order to meet and discuss these issues knowledgeably prior to the initial status conference. Furthermore, we conclude that requiring the identification of individuals and the identification, inventory, and production of documents will facilitate the staff's ability to require further disclosure of information about individuals with relevant information and/or further production of documents when necessary.

90. We are not persuaded by the arguments of some commenters, such as CBT, NYNEX, PTG, and SWBT, that twenty days is an insufficient amount of time in which to prepare answers with the level of information contemplated under these rules. We do not view defendants as having only twenty days in which to prepare their answers. The pleading requirements are intended to work in conjunction with the pre-filing requirements. Thus, by the time parties reach the stage of participating in a formal complaint before the Commission, settlement talks will have narrowed the number and scope of issues in dispute, and parties will have already commenced the collection and/or exchange of relevant information that will be used to substantiate the defendant's answer. We conclude that the imposition of these format and content requirements on defendants is not unduly burdensome, particularly in light of Congress' clear intent to expedite resolution of complaints to promote the competitive goals of the Act.

91. We also disagree with Bell Atlantic that the information produced would only be useful for depositions or broad document searches, which are seldom permitted by the Commission. Early identification of individuals knowledgeable about the matters in dispute will be an important tool for the parties and the staff, particularly in those cases where additional affidavits or other forms of factfinding become necessary. Given our experience, and in light of the short complaint resolution deadlines, we conclude that it is necessary and appropriate to require parties to identify knowledgeable individuals and potentially relevant documents early in the complaint process.

92. We also conclude that pleadings filed solely to effect delay in the prosecution or disposition of a complaint are filings for improper purpose within the meaning of § 1.734 of our rules. No commenters opposed this proposal. Adoption of this definition will work in conjunction with the new rules to further deter parties from filing unnecessary pleadings in formal complaints before the Commission.

2. *Waivers for Good Cause Shown.* a. The *NPRM.* 93. In the *NPRM,* we recognized that many of the proposed pleading requirements could be burdensome on some individuals or parties, particularly those desiring or compelled to proceed without the assistance of legal counsel due to financial and other reasons. Therefore, we proposed to waive format and content requirements for complaints, answers, and replies upon an appropriate showing of financial hardship or other public interest factors. We tentatively concluded that this waiver provision would help to ensure that full effect is given to the provision in section 208 of the Act that ''any person, any body politic, or municipal organization, or State Commission,'' may complain to the Commission about anything ''done or omitted to be done'' by a common carrier in contravention of the Act. We sought comment on this proposal and tentative conclusion, as well as on what standards should be

used to determine ''good cause'' for waiving format and content requirements.

b. Comments. 94. All parties commenting on this proposal support it. APCC and NYNEX suggest that waivers should be granted primarily for financial hardship or public interest reasons and suggest specific revenue or asset levels to define ''financial hardship.'' ATSI argues that complainants alleging violations of section 260, regarding the provision of telemessaging service, should not have to make special requests to receive good cause waivers. GST, KMC, MFS, and USTA suggest that the Commission issue form complaints and model pleadings that *pro se* complainants could either fill out or follow. GTE warns against routine granting of waivers. The NAD suggests establishing an ombudsman within the Commission to assist with accessibility complaints.

c. Discussion. 95. We conclude that parties may petition the staff for waivers of the format and content requirements for complaints, answers, and any authorized replies. Such waiver requests shall be considered on a case-by-case basis and may be granted upon an appropriate showing of financial hardship or other public interest factors. We note this waiver provision will work in conjunction with the Commission's existing general authority to waive any provision of the rules on its own motion or on petition if good cause is shown. The discretion to grant waivers of the format and content requirements based on financial hardship and other public interest factors will ensure, pursuant to section 208, that ''any person'' has the right to complain to the Commission about acts or omissions by a carrier that contravene the Act. For this reason, we do not agree with APCC or NYNEX that financial hardship should be determined solely based on set revenue or asset levels. The range of potential complainants under section 208 is broad and may include individuals, state commissions, municipalities, associations, and other entities of all forms and sizes. Likewise, the size and makeup of defendant carriers will vary greatly. Thus we conclude that waiver determinations should be made on a case-by-case basis. The Commission shall make every effort to apply its discretion in a consistent and fair manner to strike an appropriate balance between strict compliance with the rules and the needs of certain parties for more lenient requirements and timetables. Furthermore, the Commission shall have discretion to waive or modify some or all of its rules as appropriate when a waiver is granted for good cause shown. For example, if the Commission grants a waiver of the document production requirements to a party who demonstrates financial hardship, the Commission may establish an appropriate alternative method for review and production of documents in that matter.

96. We find that § 1.721(b) of the rules contains a suggested format for formal complaints that is clear and explicit and that no further form complaints or model pleadings for *pro se* complainants are necessary. Furthermore, the Enforcement Division of the Common Carrier Bureau currently provides, via the Internet, direct mailings, and public reference room access, a fact sheet designed to instruct consumers on how to file a formal complaint with the Commission. Finally, we conclude that the range of subjects that could conceivably be contained within a pleading is too broad for a model pleading form to be of much utility to *pro se* parties.

97. We decline to address in this proceeding NAD's proposal to establish a Commission ombudsman to assist with accessibility complaints in this proceeding. Such a proposal should be addressed in our section 255 implementation rulemaking, so as to permit the Commission to take a comprehensive approach to implementation of section 255.

F. Answers

1. *Reduction of Time to File Answers.* a. The *NPRM.* 98. In the *NPRM* we proposed to reduce the permissible time for a defendant to file an answer to a complaint from thirty to twenty days after service or receipt of the complaint. We tentatively concluded that this reduction was consistent with the changes we proposed regarding the form and content of pleadings and would not unduly prejudice the rights of any defendant. We further tentatively concluded that this reduction in time to answer struck the appropriate balance in distributing the burdens of compliance with the new formal complaint resolution deadlines among the complainants, defendants and the Commission.

b. Comments. 99. The majority of commenters, including AT&T, Bell Atlantic, CBT, CompTel, the cable entities, MCI, TRA, and USTA support this proposal. Ameritech, BellSouth, GTE, PTG, and SWBT contend, however, that because complainants will have months to prepare their complaints, requiring defendant carriers to submit detailed responses with full legal and factual support within a twenty day window would be unfair and unreasonably burdensome in most cases. PTG suggests that defendants be required to file their answers within twenty days only in complaints filed pursuant to section 271(d)(6)(B). ACTA and USTA suggest that defendants be permitted to supplement their answers at a later time.

c. Discussion. 100. We conclude that a defendant shall be required to file its answer to a complaint within twenty days after receipt of service of the complaint by the complainant. We find that reducing the time in which to file an answer is necessary in light of the Congressional intent to expedite the resolution of complaints alleging anti-competitive behavior by defendant carriers. We disagree with commenters who assert that defendant carriers will be overly burdened by having to file answers that comply with the format and content requirements within twenty days from the date of service. As stated earlier, we view the defendants as having far more than twenty days in which to prepare their answers because the pre-filing and format and content requirements adopted in this proceeding are intended to work in conjunction with the reduction in time to file an answer. The pre-filing requirements will alert the defendant as to the basis of the dispute. The actions taken by a defendant in participating in good faith settlement negotiations should require the same collection of information and documents that will be necessary to support its answer in compliance with the format and content requirements. The requirement of fully supported and thoroughly prepared complaints, furthermore, will facilitate a defendant carrier's ability to prepare a full response to a complaint within the twenty day period. Such pre-filing and format and content requirements will eliminate any need to allow defendants to supplement their answers. Permitting defendants to supplement their answers routinely would only encourage defendants to submit incomplete answers.

G. Discovery

101. The *NPRM* sought comment on a variety of ways to modify the discovery process in light of the new statutory deadlines. Discovery is inherently time-consuming and often fails to yield information that aids in the resolution of a complaint. The *NPRM,* in conjunction with other proposals designed to improve the content and utility of the complaint, answer, and related pleadings, sought comment on discovery proposals that would balance the parties' legitimate need for discovery with the twin goals of (1)

meeting statutory resolution deadlines, and (2) facilitating prompt resolution of all formal complaints.

1. Permissible Requests for Discovery. a. The *NPRM.* 102. In our experience, discovery has been the most contentious and protracted component of the formal complaint process. In the *NPRM,* we stated that one of the key elements to streamlining the enforcement process was to maximize staff control over the discovery process. We stated our intention to examine carefully what role, if any, discovery should continue to play in resolving formal complaints, and sought comment on a range of options to either eliminate or modify the current discovery process.

103. For our first approach, we sought comment on the benefits and drawbacks of eliminating the self-executing discovery permitted under our current rules by prohibiting discovery as a matter of right. This proposal placed the emphasis of developing facts and arguments at the complaint and answer stages of the proceeding, rather than on discovery and subsequent briefing opportunities. Under this proposal, if the record presented through such pleadings failed to provide a basis for resolving disputes over material facts or was otherwise insufficient to permit our resolution of a complaint, the staff would have the discretion to authorize limited discovery at the initial status conference, that would be held shortly after receipt of the defendant's answer to the complaint. We sought comment on various aspects of eliminating automatic discovery, including whether discovery was necessary in all cases, whether such a rule would pose a hardship for any particular segment of complainants, and what standards should apply in the event that discovery was authorized by the staff.

104. For our second alternative approach, we sought comment on the benefits and drawbacks of a proposed rule that would limit self-executing discovery to something other than the thirty written interrogatories authorized under the current rules. We asked parties to comment on whether a more limited form of discovery as a matter of right would accommodate a party's ability, where necessary, to identify and present to the Commission material facts that may be in the possession or control of the other party; whether allowing a limited amount of discovery as a matter of right might decrease the staff's burden in deciding discovery requests on a case-by-case basis; and whether limiting discovery in this manner would detract from full compliance with our rules regarding the level of detail that should be offered in support of complaints and answers. Pursuant to this approach, the staff would permit additional discovery only in extraordinary cases. We sought comment on various aspects of this approach, including whether a reduction in the number of allowable written interrogatories would be appropriate, and whether interrogatories should be limited to questions designed to illuminate specific factual assertions or denials.

105. In our third alternative approach, we sought comment on continuing to allow some limited discovery as a matter of right, but allowing Commission staff to set limits on the scope of that discovery and to set specific timetables for such discovery. We noted that authorizing the staff to limit the scope of the written interrogatories could be an effective deterrent to attempts by parties to use discovery for purposes of delay or to gain tactical leverage for settlement purposes. In conjunction with this approach, we proposed to require that objections to interrogatories be filed by the date of the initial status conference, thereby enabling staff to rule on such objections at that time. We noted that under this proposal, extensions of time to initiate limited discovery and file objections and motions to compel would be granted only in extraordinary circumstances.

b. Comments. 106. The majority of commenting parties argue that the Commission should continue to allow discovery as a matter of right. CBT, ICG, and MCI argue that eliminating discovery as a matter of right will cause delay due to the fact that motions requesting discovery will almost always be filed and ICG argues further that such motions may produce inconsistent discovery rulings. PTG argues that the prohibition of discovery would inhibit the development of facts. Bechtel & Cole argue that the right to discovery is necessary because defendants have the power to protect information in their sole possession. APCC, CompTel and TRA argue that discovery is especially necessary where the defendant has sole possession of the information a complainant needs to make its case, such as in the case of allegations of cross-subsidies or discrimination. ACTA and CompTel argue that due process requires that a complainant be able to direct its case as it sees fit.

107. Parties objecting to the elimination of discovery as a matter of right propose several ways to streamline the discovery process. PTG and TCG suggest that the Commission could limit discovery to twenty written interrogatories, while USTA and GTE suggest that fifteen interrogatories would be the appropriate number. The cable entities, however, suggest allowing thirty discovery requests, including interrogatories, requests for production of documents, and requests for physical inspection of materials and facilities, to be filed ten days after service of the complaint, an additional fifteen such discovery requests to be filed within five days of the filing of the answer, and allowing parties to request additional discovery thereafter. The cable entities argue that the certainty of prompt resolution of discovery disputes will discourage parties from making frivolous requests or objections.

108. A number of the parties that oppose the elimination of discovery as a matter of right suggest that discovery disputes should be resolved at the initial status conference. Several parties argue that it would be useful for Commission staff to use the initial status conference to control the scope and/or scheduling of discovery. U S West and TRA, however, argue that discovery should be limited by the staff only with regard to timetables. TRA states that even Rule 26 of the FRCP provides for traditional discovery, in addition to voluntary disclosure, and states further that Commission staff should not control the prosecution of an action. MCI suggests that requiring discovery to be discussed at the initial status conference will help Commission staff maintain control over the discovery process, although MCI asserts that the proposed timing of the initial status conference is too early in formal complaint proceedings to rule on objections to discovery.

109. To promote the resolution of discovery disputes at the initial status conference, several parties argue that discovery requests and objections thereto should be served and filed prior to the initial status conference. MCI argues, however, that it would be unfair to complainants to require discovery requests to be filed with complaints and answers because the defendants would be able to formulate their requests after seeing the complaint, while the complainants would be required to formulate their requests prior to seeing the answer. CompTel argues that the proposed timetables for objecting to interrogatories provides insufficient time for parties to review the interrogatories, and that therefore parties will always file objections to interrogatories rather than answer them. CompTel suggests instead that parties be required to respond promptly to interrogatories for which their objections are denied. While they support retaining discovery as a matter

of right, GST, KMC and MFS argue that interrogatories should be prohibited or limited because they are often useless. If allowed, interrogatories should not be served until after the parties file their joint statement of stipulated facts and key legal issues, to facilitate the targeting of disputed areas. APCC suggests that the Commission require early discovery, including expedited rulings on discovery disputes.

110. GTE, MCI, Nextlink and TCG argue that discovery as a matter of right is necessary because all prior disclosures are ''voluntary'' and parties would disclose only those facts solely in their possession that are most favorable to their case. ICG argues that the absence of discovery as a matter of right would preclude parties from checking the accuracy of their opponent's disclosures. TRA is concerned that elimination of discovery as a matter of right would result in fewer complaints being filed with the Commission because injured parties would lack access to information.

111. AT&T, BellSouth, NYNEX, and SWBT argue that there should be no discovery as a matter of right. AT&T argues that abuses will continue to occur if parties are entitled to a fixed number of interrogatories. BellSouth argues that full discovery is always available in federal court. MCI counters this argument by asserting that discovery should not be the exclusive province of federal courts because courts often make primary jurisdiction referrals to the Commission in section 207 cases. SWBT's support of the elimination of discovery is contingent upon two requirements: (1) providing defendants with the right to remove a formal complaint proceeding to federal court, and (2) a complete prohibition on motions for discovery to prevent the routine filing of such motions. TRA opposes SWBT's suggestion that the Commission provide defendants with the right to remove formal complaints to federal court because it argues that defendants would use such a procedure to their tactical advantage to avoid expedited resolution.

112. SWBT argues that discovery is not needed because parties do not have a right to file a formal complaint and then use discovery to determine if a claim exists. SWBT suggests that parties be required to certify that they engaged in good faith discovery discussions and exchanges prior to the filing of the complaint.

113. AT&T and NYNEX argue that the Commission should control all discovery, including the scope, timing and number of interrogatories, and issue discovery rulings at the initial status conference. NYNEX proposes that parties be required to propound up to thirty interrogatories with the complaint and answer and file any opposition to such discovery five days prior to the initial status conference. AT&T argues that discovery requests in addition to interrogatories should be (1) only allowed in extraordinary circumstances, (2) requested at the initial status conference, and (3) discussed with the opposing party prior to the filing of the motion requesting such discovery, with any opposition to such motion due in five days.

114. AT&T suggests that responses to interrogatories should be filed with the Commission. APCC suggests that a ''good cause waiver'' should be available to grant relief to parties from discovery limitations. Ameritech suggests, and BellSouth concurs in its Reply comments, that the Commission implement procedures such as those contained in section 252(b)(2) of the Act, that are applicable to compulsory arbitration of interconnection disputes. GST, KMC and MFS suggest the implementation of mandatory ''meet and confer'' conferences between the parties to address procedural issues and potential disputes prior to the initial status conference. AT&T supports the meet and confer concept. CBT opposes mandatory meet and confer conferences, arguing that the Commission should not be adding unnecessary requirements for the parties to fulfill. ICG suggests that the Commission make clear that it will not tolerate form objections and answers. In light of the Commission's proposals to permit interrogatories only when it determines such discovery is appropriate, AT&T suggests deleting § 1.729(e) of the Commission's rules because it would be superfluous.

c. Discussion. 115. For the reasons discussed below, we eliminate the rule authorizing the parties to initiate self-executing discovery. In its place, we have adopted rules and policies that carefully balance the rights of the parties and the need to expedite the resolution of complaints in a number of important aspects. These new rules: (1) require complainants and defendants to exercise diligence in compiling and submitting facts to support their complaints and answers; (2) discourage reliance on the often protracted discovery process as a means to identify or develop information needed to support a complaint or answer; (3) give parties an opportunity to make their cases for or against limited discovery early in the proceedings; (4) reduce the need for time-consuming motions to compel; (5) provide Commission staff with more control over the discovery process; and (6) limit each party's ability to use discovery for delay or other purposes unrelated to the merits of the dispute. The 1996 Act imposed both statutory deadlines on certain complaints and an overall pro-competitive policy on the handling of all formal complaints, thus signifying an intent that we resolve quickly disputes involving allegations of interference in the development of competition in telecommunications markets. The discovery procedures under the old rules were time consuming and were susceptible to abuses that often caused undue delays in our consideration of the merits of a complainant's claims. The discovery rules adopted in this proceeding expedite the discovery process, which, in turn, expedites the resolution of all formal complaints, in accordance with the requirements and policies of the 1996 Act.

116. The new procedures and policies allow the staff to consider and rule on reasonable, properly focused requests for interrogatories and other discovery on an expedited basis as follows:

(a) With its complaint, a complainant may file with the Commission and serve on the defendant requests for ten written interrogatories. A defendant may file with the Commission and serve on the complainant requests for ten written interrogatories during the period beginning with the service of the complaint and ending with the service of the answer.

(b) Within three calendar days following service of the answer, a complainant may file with the Commission and serve on the defendant requests for five written interrogatories. Such additional interrogatories shall be directed only at specific factual allegations made by the defendant in support of its affirmative defenses.

(c) Requests for interrogatories shall contain (1) a listing of the interrogatories requested; and (2) an explanation of why the information sought in each interrogatory is necessary to the resolution of the dispute and unavailable from any other source.

(d) Oppositions and objections to the requests for interrogatories shall be filed with the Commission and served on the propounding party (1) by the defendant, within ten calendar days of service of interrogatories served simultaneously with the complaint and within five calendar days of interrogatories served following service of the answer, (2) by the complainant, within five calendar days of service of the interrogatories, and (3) in no event less than three calendar days prior to the initial status conference.

(e) Section 1.730 of the current rules, which expressly authorizes parties to petition for additional ''extraordinary'' discovery in the form of requests for document production, depositions and additional interrogatories, shall be deleted.

(f) Commission staff will be inclined to grant all reasonable requests for interrogatories and other forms of discovery to the extent permitted under any applicable statutory deadlines. It will issue rulings and direct the parties accordingly at the initial status conference.

(g) Commission staff retains the discretion to order on its own motion, additional discovery including, but not limited to, document production, depositions, and/or interrogatories. The staff also retains discretion to limit the scope of permissible interrogatories and to modify or otherwise relax the discovery available in particular cases where appropriate.

117. These rules and policies are designed to work in conjunction with our pre-filing and format and content requirements, which are designed to improve the utility and content of the initial complaint and answer filed in a section 208 proceeding. The rules as a whole are intended to change fundamentally the nature of the formal complaint process to enforce the Commission's long-standing requirement that ''[a]ll matters concerning a claim [be pled] fully and with specificity.'' In adhering to these fact-pleading requirements, we will further the pro-competitive policies of the 1996 Act by expediting the resolution of all formal complaints. We find that these new requirements strike a reasonable balance between, on the one hand, providing for discovery where necessary to ensure the development of a complete record and, on the other hand, preventing the use of discovery as the primary means of determining if a claim exists.

118. Some commenters express doubt that parties will disclose unfavorable information, and argue that discovery is needed to verify the accuracy of initial disclosures. The format and content rules address this concern by requiring that parties reveal the means by which they determine what documents and information to disclose. Disclosure of the nature of the inquiry should significantly reduce concerns about accuracy, since a failure to address a patently relevant topic will be readily apparent. The arguments of some commenters are based on the use of the phrase ''voluntary disclosure.'' We emphasize that the phrase ''voluntary disclosure'' refers to the fact that the parties are obligated to disclose all information that is relevant to the resolution of a dispute in the absence of a specific discovery request. Use of the term ''voluntary disclosure'' does not limit the obligation of the disclosing party to identify all information that is relevant to the facts in dispute, including information that is unfavorable to the disclosing party.

119. The rules adopted address MCI's concerns that it is unfair to require complainants to file their discovery requests without an opportunity to review the answer. First, because the parties must make a good faith effort to resolve their dispute prior to the filing of the complaint, the complainant will know what to expect in the defendant's answer. Second, the rules provide the complainant with an opportunity to seek discovery on affirmative defenses first raised in the answer. In light of these factors and the time constraints of statutory deadlines, MCI's fairness argument fails.

120. We disagree with the argument that the Commission should provide discovery as a matter of right because federal court rules provide for discovery as a matter of right, in addition to required initial disclosures. While the Commission has often found the federal rules instructive, it has consistently rejected wholesale adoption of them. A significant difference exists in the procedural requirements of actions brought before the different fora. Federal court rules require notice pleading while the Commission's rules require fact pleading. Notice pleading anticipates the use of discovery to obtain evidence of the facts to support a complainant's claims, while fact pleading requires that a complainant know the specific facts necessary to prove its claim at the time of filing. Neither section 208 of the Act nor the Commission's own rules and policies contemplate the expansive discovery available in federal district court, and in fact, section 207 of the Act gives parties the option of filing their complaints in federal district court rather than with the Commission. We, further, disagree with the argument that self-executing discovery is necessary because due process requires that a complainant be able to direct its case as it sees fit. As we have stated, our rules require that parties plead all matters fully and specifically, and commission staff will be inclined to grant reasonable requests for discovery to the extent permitted under any applicable statutory deadlines. In this context, a party's due process rights are fulfilled by being provided with the opportunity to request discovery and present its argument to the Commission as to why discovery is necessary in its particular case. The fact that the Commission may deny a party's discovery request, following consideration of the merits of such request, does not negate the party's right to the opportunity to make its case for discovery.

121. We disagree with the commenters who state that ending self-executing discovery will result in an avalanche of motions for discovery, which would lengthen the discovery process and could result in inconsistent discovery rulings. Our rules will provide for the quick resolution of discovery disputes by the date of the initial status conference, which will be held ten days after the answer is filed. We note that these same commenters strongly support proposals requiring the staff to play a more active role in the discovery process by defining the timing and scope of necessary discovery. These rules allow Commission staff to take a more active role in the discovery process to meet statutory deadlines and expedite the resolution of all formal complaints.

122. We conclude that SWBT's suggestion that the Commission require the parties to engage in good faith discovery discussions prior to the filing of the complaint is unduly burdensome. The Commission is already requiring parties to engage in good faith settlement negotiations prior to the filing of a complaint. As part of that obligation, we anticipate that parties will exchange relevant documentation to the extent that it would help to resolve conflicts. We also conclude that SWBT's suggestion would be likely to raise numerous disputes after the filing of the complaint, *e.g.*, concerning what constitutes ''good faith discovery,'' that would consume more time and resources than would be saved by the implementation of such a requirement.

123. SWBT suggests that the Commission adopt a rule providing defendants with the right to remove disputes to federal court where broader discovery is available. We decline to adopt this suggestion because it would eliminate rights provided to complainants in the Act. The Act provides complainants with the choice of filing claims with the Commission or in federal court. The 1996 Act further provides complainants with the right to have the Commission resolve certain types of complaints within statutory deadlines. Because those deadlines are enforceable only at the Commission, providing a defendant with the right to remove any claim to federal court would provide it with the ability to eliminate the complainant's right to have its

dispute resolved within the applicable statutory deadline. SWBT, furthermore, made this proposal in conjunction with its support for the proposal to eliminate all discovery, which we have declined to adopt.

124. Additionally, we reject Ameritech's proposal that, as a means to effective discovery, the Commission adopt disclosure requirements similar to those in section 252(b)(2), which are for compulsory arbitration of interconnection agreements. Such a proposal is unworkable in light of the fact that section 252(b)(2) procedures would not accommodate the variety of complaints that may be brought before the Commission. Section 252(b)(2) disclosure procedures are directed at arbitration of disputes of a particular nature before state commissions. Our voluntary disclosure rules will provide the benefits of that provision, the initial disclosure of relevant documentation, while the discovery rules adopted herein contain sufficient flexibility to be adapted to the unique circumstances of individual cases.

125. The issue of requiring a meet and confer conference to discuss discovery disputes is addressed in the Status Conference section of this *Report and Order*.

2. Reduction of the Administrative Burden of Filing Documents. a. The *NPRM*. 126. In the *NPRM* we sought comment on methods to reduce the administrative burden on the Commission of accepting filed documents, either identified in initial filings or obtained through discovery, including implementation of a computer scanning requirement for large document productions.

b. Comments. 127. Those parties that commented on this proposal oppose the imposition of a scanning requirement. CBT argues that such a requirement would be a waste of resources while CompTel argues it would be too burdensome.

c. Discussion. 128. We decline to adopt a scanning requirement for all large document productions. Instead, we shall provide Commission staff with the discretion, in individual cases involving the review of a large number of documents, to require the parties to provide the documents to the Commission in a scanned or other electronic format. Material in any electronic format shall be indexed and submitted in such manner as to facilitate the staff's review of the information. Commission staff shall have discretion to reach an agreement with the parties about the appropriate technology to be used in light of the needs of the staff and the current cost and availability of document management technology. Commenters opposed to the imposition of a scanning requirement make general statements that a scanning requirement would be unjustifiably costly and burdensome to implement. Because such a requirement will be imposed on an individualized basis, the staff shall decide on a case-by-case basis whether the nature of the production involved will justify the cost and burden of electronic formatting.

129. We also recognize that a significant number of complex technical issues that are beyond the scope of the *NPRM* would have to be addressed prior to the implementation of a comprehensive document scanning requirement. Because scanning technology is varied and not universally compatible, the implementation of a standardized scanning requirement would require us to choose a single type of scanning technology. Several complex questions would therefore arise, including, but not limited to, what information should be placed in identifying fields and whether the documents must be searchable by text. Because of these complex technical questions, we decline to impose a scanning requirement at this time, although we may address this issue again at a later date, following our consideration of possible procedures for allowing the electronic filing of documents in GC Docket 97–113.

3. Voluntary Agreements for the Recovery of Discovery Costs. a. The *NPRM*. 130. One of the goals in the *NPRM* was to identify ways to encourage parties to exercise diligence in identifying and satisfying their discovery needs. For example, although the Commission does not have authority to award costs in the context of a formal complaint proceeding, we sought comment on whether encouraging formal complaint parties to agree among themselves to a cost-recovery system for discovery would facilitate the prompt identification and exchange of information. As an example, we suggested that the parties could stipulate that the losing party in the complaint proceeding would bear the reasonable costs associated with discovery, including reasonable attorneys' fees.

b. Comments. 131. Although GST, KMC and MFS support the Commission encouraging parties to enter into voluntary cost recovery agreements, Ameritech, CBT, CompTel, PTG, SWBT, and TCG oppose such a position. CompTel, GTE, PTG, and SWBT argue that parties will be unable to agree to a cost recovery system. Ameritech argues that parties will be tempted to convince the decisionmaker to award enough money to the ''losing'' party to offset the costs of discovery. Ameritech suggests the alternative of giving the factfinder the discretion to decide cost recovery issues and award financial damages for the filing of frivolous complaints. TCG argues that, if the Commission encouraged such agreements, parties might not comply with discovery requests unless they are compensated. CBT argues that discovery abuse would not be lessened by having the loser pay the cost of discovery, since the winning party is as likely to have abused discovery. CBT supports, however, requiring parties to compensate each other for extraordinary efforts to comply with discovery requests. CompTel suggests that the Commission should set a reasonable copying fee.

c. Discussion. 132. We decline to encourage voluntary cost recovery agreements among parties for several reasons. We conclude that recovery of discovery costs will not be a significant problem in formal complaints because the rules we adopt today will make extensive discovery the rare exception rather than the general rule, regardless of the willingness of parties to pay for discovery. Furthermore, most of the commenters oppose this proposal. Since the majority of the commenters are potential parties to formal complaints before the Commission, we find it unlikely that parties would enter into such voluntary cost recovery agreements.

4. Referral of Factual Disputes to Administrative Law Judges. a. The *NPRM*. 133. In the *NPRM* we proposed to amend our rules to authorize the Common Carrier Bureau and the Wireless Telecommunications Bureau, on their own motion, to refer disputes over material facts in formal complaint proceedings to an administrative law judge (''ALJ'') for expedited hearing. The disputes referred would be those that cannot be resolved without resorting to formal evidentiary proceedings, although adjudication of novel questions of law or policy would remain outside of the delegated authority of the ALJ. We noted that, as a practical matter, the Bureaus would refer issues only where necessary to determine acts or omissions, and not to determine the legal consequences of such acts or omissions. We tentatively concluded that expanding the Bureaus' delegated authority in this limited way would provide the staff with an important tool for resolving disputes over material facts that cannot be resolved without resort to formal evidentiary proceedings.

b. Comments. 134. The majority of commenters support the adoption of a rule authorizing the Common Carrier Bureau and the Wireless Telecommunications Bureau to refer factual disputes to an ALJ for resolution. Bechtel & Cole's support for authorizing such referral, however, is contingent upon the establishment of deadlines for ALJs to resolve such disputes, as well as a clear definition of the role and responsibility of the ALJ in each case. CBT suggests that the ALJ hearing be located at the site of the alleged violation. GST, KMC and MFS argue generally that the procedures for referral of factual disputes to ALJs should be clarified. BellSouth, however, opposes the referral of factual issues to ALJs, except as a last resort, arguing that it would only add a layer of procedural rules while still requiring the Commission to make a legal determination on the case itself. BellSouth supports referral of disputes to ALJs for hearing only if the Commission adopts the pole attachment complaint rules.

c. Discussion. 135. We amend § 0.291 of the rules to authorize the Chief of the Common Carrier Bureau to designate factual disputes for evidentiary hearings before an ALJ and clarify that the change in the Bureau's delegated authority is intended to authorize the Bureau to designate factual disputes for hearing even in those cases where the facts to be determined may be considered ''novel.'' We retain, however, the existing prohibition on the Common Carrier Bureau designating for hearing those issues involving novel questions of law or policy which cannot be resolved under outstanding precedents or guidelines. No revision is required in the existing delegated authority of the Wireless Telecommunications Bureau, which now permits it to delegate novel factual issues for hearing.

136. Factual disputes that are referred to an ALJ for hearing shall be referred to such ALJ through a hearing designation order. The hearing designation order may set a recommended deadline for the ALJ to certify the record by, and, if time permits, issue a recommended decision on the factual dispute. The presiding judge shall certify the record and if time permits, issue a recommended decision, pursuant to the instructions contained in the hearing designation order, before referring the matter back to the Commission for, *inter alia,* final resolution of all outstanding factual, legal and policy issues. We clarify that, where the Common Carrier Bureau or the Wireless Telecommunications Bureau designates a dispute for expedited hearing, the designating Bureau may authorize the presiding judge to schedule the proceedings to enable such deadline to be met. We further clarify that the Common Carrier and Wireless Telecommunications Bureaus will not refer a factual dispute to an ALJ for hearing where the time required by the ALJ to complete a hearing on such dispute would preclude the Commission from meeting an applicable statutory deadline.

137. There is broad support among the commenters for the use of ALJs to resolve factual disputes. After due consideration of commenters' concerns about compliance with statutory deadlines, we conclude that the existing rules provide the Commission with the authority to request, in a hearing designation order, that disputes be resolved by an ALJ within a set period of time consistent with the final Commission decision complying with the statutory deadline and to authorize ALJs to use discretion in the application of their hearing rules to ensure compliance with the deadline recommended by the Commission. We conclude, in addition, that the concerns of some commenters about such referrals slowing down the complaint process are unwarranted. The Commission's obligation to comply with statutory deadlines is not eliminated by such referral. Referral of factual disputes to ALJs will, in fact, expedite the process because referrals will be used in those circumstances where the factual disputes cannot be resolved promptly, if at all, on a written record. In such cases, it would take longer for the Commission to resolve such disputes itself without a hearing than it would for the Commission to do so after a hearing before an ALJ. ALJs are, furthermore, expert triers of fact and are well-situated to conduct their proceedings within the time frames given by the Commission, such that sufficient time will remain for the Commission to issue its decision in compliance with the statutory deadline. We also conclude that ALJ hearings will be held at the offices of the Commission in Washington, D.C., unless otherwise ordered by the Commission. It would be impractical to provide for hearings at the location of each dispute in light of both the time limitations that may be imposed on the ALJs and the limited resources of the Commission.

138. Additionally, we note that the Enforcement Task Force is currently evaluating whether it may be appropriate, in certain limited categories of disputes, to conduct mini-trials or some other form of live evidentiary proceeding, either before an ALJ or the Task Force. If adopted, this test procedure, subject to careful time constraints, would allow parties a substantially greater opportunity to present live testimony and oral argument than is contemplated by the hearings conducted pursuant to designation orders.

H. Status Conferences

139. The *NPRM* proposed to use status conferences to speed up the formal complaint process in order to enable compliance with the newly imposed statutory deadlines and overall streamlining of the formal complaint procedures. The status conference proposals were intended to work in conjunction with the modifications of the briefing and discovery rules.

1. The Initial Status Conference. a. The *NPRM.* 140. We proposed to modify our rules concerning status conferences to improve the ability of the Commission staff to render prompt decisions and order any necessary actions by the parties. We proposed to require that, unless otherwise ordered by the staff, an initial status conference take place in all formal complaint proceedings ten business days after the defendant files its answer to the complaint. Such an early status conference would be used to discuss such issues as claims and defenses, settlement possibilities, scheduling, rulings on outstanding motions, the necessity of and, if necessary, scope and/or timetable of discovery.

b. Comments. 141. A number of commenters support scheduling the initial status conference ten days after the filing of the answer. Several commenters, such as CompTel, MCI, Nextlink, and PTG, however, assert that it may be unrealistic for parties to be required to argue all discovery issues in that short a time period. They suggest either a second status conference or that the initial status conference be held twenty to thirty days after the filing of the answer. AT&T, CBT, PTG, and U S West argue that parties should continue to be permitted to attend status conferences by telephone conference call.

142. The commenters agree that the issues to be resolved at the initial status conference should include the scope and scheduling of discovery and the briefing schedule. The cable entities state that they envision the initial status conference as the ''focal point of the complaint proceeding.'' PTG suggests the scheduling of a formal settlement conference at that time. GST, KMC, and MFS also propose to have parties attend ''meet and confer'' conferences prior to the initial status conference so that

agreements reached and disputes remaining unresolved after the meet and confer may be reduced to writing and given to the staff at the initial status conference. GST, KMC, and MFS suggest that the following subjects be discussed at the meet and confer: (1) the necessity and/or scope of discovery beyond the exchange of documents and information designations; (2) if depositions or affidavits are necessary, and if so, the number and proposed dates; (3) the timetable for completion of discovery; (4) the need or desirability of referring technical issues to an neutral expert; (5) settlement possibilities; (6) if briefing is necessary; (7) whether parties are willing to have damages claims resolved separately from liability issues using the supplemental complaint process, where such action has not already taken place; (8) disagreements over designation of documents as confidential or proprietary; (9) in section 271(d)(6)(B) cases, whether parties can agree to waive the ninety-day resolution deadline; and (10) the draft joint statement of stipulated facts and key legal issues. AT&T and the cable entities support requiring the meet and confer, while CBT opposes the meet and confer because it argues that the Commission should not impose additional requirements on parties.

c. Discussion. 143. We require that the initial status conference take place ten business days after the date the answer is due to be filed unless otherwise ordered by the staff. Setting the initial status conference date for ten business days after the date the answer is due to be filed will enable Commission staff to render decisions and/or order necessary actions promptly. Commission staff retain the discretion to permit parties to attend status conferences by telephone conference call on a case-by-case basis.

144. Commenters that oppose scheduling the initial status conference for ten business days after the date the answer is due to be filed claim that it may be unrealistic to require the parties to address discovery issues so early in the proceeding. In response to these commenters, we shall use a complaint with a ninety-day resolution deadline as an example. In a ninety-day complaint, the date of the initial status conference is 34 days into the proceeding under the amended rules. In other words, over one third of the time allocated for resolution of such complaint will have passed before the status conference takes place. In the remaining fifty-six days, the parties will be required to comply with any discovery ordered and to draft briefs to include such discovery findings, and the staff will be required to consider all submissions by the parties and issue a decision taking appropriate action. Given these requirements, it is necessary for the parties and the Commission to move the proceeding along with great speed. Even if the complaint is not subject to such an abbreviated schedule, the expedited resolution of all formal complaints is essential to fostering and maintaining competition in accordance with the goals of the 1996 Act. Furthermore, the requirement of an early initial status conference will not be as burdensome as some commenters envision. Our status conference requirement must be considered in conjunction with the establishment of requirements for pre-filing activities, format and content of pleadings, and discovery procedures. The pre-filing activities will narrow the scope of disputed issues. The format and content requirements will reduce the amount of discovery that is necessary by requiring the disclosure of relevant evidence at the complaint and answer stage of a formal complaint proceeding. The new discovery procedures will require the filing of all requests for discovery, as well as objections and oppositions thereto, prior to the initial status conference, to enable the staff to address discovery issues at the initial status conference. Finally, Commission staff will retain the discretion to modify the scheduling of the initial status conference when it is warranted by the facts and circumstances of an individual case.

145. We also adopt, in part, the proposal made by GST, KMC, and MFS to require the parties to meet and confer prior to the initial status conference. Parties will be required to schedule and attend a meet and confer conference amongst themselves prior to the initial status conference to discuss the following issues: (1) settlement prospects; (2) discovery; (3) issues in dispute; (4) schedules for pleadings; (5) joint statements of stipulated facts, disputed facts, and key legal issues; and (6) in a section 271(d)(6)(B) proceeding, whether the parties agree to waive the ninety-day resolution deadline. All proposals agreed to and disputes remaining must be reduced to writing and submitted to the staff two business days prior to the initial status conference. This submission is to be made separately from the joint statement of disputed and undisputed facts and key legal issues that is due on the same date. Our requirement that the parties meet and confer will prepare the parties for a productive status conference because it will require the parties to consult early on substantive and procedural issues. The requirement to meet and confer should also eliminate any element of surprise that might prevent parties from reaching agreements at the status conference, due to a party needing time to consider an opponent's newly disclosed position on a particular issue. CBT's argument against the imposition of further requirements is unpersuasive. The meet and confer will not require the parties to address any new issues, but rather imposes an earlier deadline for completing activities which the parties would have to perform in any case.

2. Status Conference Rulings. a. The *NPRM.* 146. In the *NPRM,* we proposed to modify the requirement that the staff memorialize oral rulings made in status conferences. We proposed that, within twenty-four hours of a status conference, the parties in attendance, unless otherwise directed, would submit to the Commission a joint proposed order memorializing the oral rulings made during the conference. Commission staff would review and make revisions, if necessary, prior to signing and filing the submission as part of the record. To facilitate the submission of these joint proposed orders, we further proposed that parties be allowed, but not required, to tape record the staff's summary of its oral rulings or, alternatively, to transcribe the status conference proceedings. We sought comment on these proposals and any other alternative proposals.

b. Comments. 147. Most commenters, including ACTA, ATSI, Bell Atlantic, GTE, and ICG, support requiring parties to file a joint proposed order within twenty-four hours of a status conference. ACTA, AT&T and GTE suggest that the Commission provide an alternative procedure for parties that cannot agree on a proposed order. Bell Atlantic suggests that the Commission provide the parties with resources to draft the proposed order on-site following the conference, with staff remaining available for consultation. CBT, NYNEX, and PTG oppose requiring parties to file a joint proposed order memorializing the status conference rulings. They argue that parties will be unable to agree on the content of such an order and that the Commission staff member making the ruling is in the best position to know what was intended by the ruling. AT&T suggests that joint proposed orders would be unnecessary if the parties have made a stenographic record.

148. Commenters are split regarding the allowance of audio recording and/or the use of stenographers at status conferences. ICG supports audio recording of the entire status conference. GST, KMC, and MFS

support the audio recording of a summary of the staff's oral rulings, but oppose the use of a stenographer as being unnecessary. SWBT opposes using a stenographer because of concern that a transcribed record may have a chilling effect on the free flow of discussions at status conferences.

c. Discussion. 149. We require parties to provide the Commission with a joint proposed order memorializing the rulings made at each status conference. Because of the many important issues that will be resolved during the status conference, a written record of the rulings will be an essential reference and organizational tool for the parties and the Commission. Requiring the parties to provide a joint proposed order will allow the Commission to focus its scarce resources on other aspects of the complaint process. Requiring the parties to submit such joint proposed order by the end of the business day following the status conference is necessary because compliance with rulings made at status conference may require action within a matter of days. Such time sensitivity requires that any confusion or dispute among the parties over rulings made at the status conference be brought to the attention of Commission staff as early as possible. It is instructive to note that the Commission's *ex parte* rules require parties making oral *ex parte* presentations to file a written memorandum with the Commission's Office of the Secretary that summarizes the data and arguments presented on the next business day after the presentation. It has been our experience that parties do not have difficulties complying with such requirement. As explained below, we have eased the burden of compliance with this requirement by providing parties with the opportunity to submit either the joint proposed order or a transcript of the status conference.

150. The joint proposed order shall summarize the rulings made by the staff in the status conference. If the parties cannot agree on all rulings in the joint proposed order they may submit instead a joint proposed order that contains the proposed rulings upon which they agree and alternative proposed rulings for those rulings upon which they cannot agree. The joint proposed order shall comply with the format and content requirements for proposed orders, and shall be filed with the Commission by 5:30 p.m. on the business day following the date of the status conference, unless otherwise directed by Commission staff.

151. If parties choose to make an audio recording or stenographically transcribe parts of the status conference, they shall submit, in lieu of a joint proposed order, either a transcript of the audio recording or the stenographic transcript of such status conference within three business days following the conference, unless otherwise directed by Commission staff. Parties will be permitted to make an audio recording of or stenographically transcribe only those parts of a status conference that are deemed ''on the record'' by Commission staff at its discretion. We shall prohibit any recording in any manner of those parts of the status conference deemed ''off-the-record'' by the staff. Any party wishing to make an audio recording of the staff's summary of oral rulings only must notify the staff and all attending parties in writing of its intent at least three business days prior to the scheduled conference. Any party wishing to make an audio recording of those portions of a status conference that are ''on-the-record'' must secure the agreement of the attending parties and notify the staff of such intent at least three business days prior to the scheduled conference. Such audio recordings shall be transcribed and such transcript submitted as part of the record no later than three business days after the conference, unless otherwise directed by the staff. Parties wishing to transcribe by stenographer those portions of a status conference that are ''on-the-record'' must secure the agreement of the attending parties and notify the staff in writing of such intent at least three business days prior to the scheduled conference. Such transcript shall be submitted as part of the record no later than three business days after the status conference, unless otherwise directed by the staff. It is the sole responsibility of the party or parties choosing to make an audio recording of or stenographically transcribe any part of a status conference to make all arrangements for such recording or transcription, including, but not limited to, arrangements for payment of the costs of such recording or transcription.

152. The commenters have raised legitimate concerns that the making of a formal record of a status conference by any means may have a chilling effect on the free exchange of information by the parties. We emphasize that the staff will retain significant discretion to determine in each case what is ''on-the-record'' and what is ''off-the-record'' to prevent parties from using the record to stifle such exchanges.

I. Cease Orders, Cease and Desist Orders, and Other Forms of Interim Relief

153. Certain provisions added by the 1996 Act authorize the Commission to take interim actions against LECs pending final resolution of complaints in some instances and to order permanent injunctive relief in others. Sections 260 and 275 of the Act contain nondiscrimination provisions governing the provision of telemessaging service and the provision of alarm monitoring service, respectively, by incumbent LECs. Sections 260(b) and 275(c) require the Commission to issue, upon an appropriate showing by the complainant of a violation that resulted in ''material financial harm,'' an order directing the incumbent LEC ''to cease engaging'' in such violation ''pending a final determination'' by the Commission. Both sections provide that such cease orders ''shall'' be issued within 60 days of the filing of a complaint that satisfies the stated criteria. In addition, section 274, pertaining to electronic publishing by BOCs, authorizes the Commission (or federal district court) to issue cease and desist orders for violations of the section. Unlike sections 260 and 275, however, section 274 contains no deadline for issuing such orders, nor does it predicate the issuance of such orders on a showing of material financial harm.

1. Cease and Cease and Desist Orders Under Title II of the Act and Other Forms of Interim Relief. a. The *NPRM.* 154. In the *NPRM,* we invited comment on our tentative conclusion that the procedures prescribed in Title III (section 312) of the Act for issuing cease and desist orders are not mandatory in section 208 and related Title II complaint proceedings, and that the complaint provisions added by the 1996 Act give the Commission additional authority to issue cease or cease and desist orders in certain cases.

155. Section 312 prescribes certain ''Administrative Sanctions'' available to the Commission to remedy violations of the Act and the Commission's rules and orders. Subsection 312(a) provides that the Commission ''may'' revoke a station license or construction permit under any one of seven enumerated factual circumstances. 47 U.S.C. 312(a). Subsection 312(b) similarly provides that the Commission ''may'' order ''any person'' who has failed to operate substantially as set forth in a license or has otherwise violated a provision of the Act, certain provisions of Title 18 of the United States Code, or any rule or regulation of the Commission, to ''cease and desist'' from such action. 47 U.S.C. 312(b). Before taking the actions prescribed in Subsections 312 (a) and (b), Subsections 312 (c) and (d) require that the Commission conduct ''show cause'' proceedings in which the Commission bears both the burden of proceeding with the introduction of evidence and the burden of proof. 47

U.S.C. 312 (c) and (d). We also asked commenters to address whether an order to ''cease engaging in'' violations under sections 260(b) and 275(c) would be the same as an order to ''cease and desist'' violations under section 274(e)(2).

2. Comments. 156. Apart from comments regarding the evidentiary showing that should be required to obtain cease and cease and desist orders, few commenting parties draw a distinction between the cease orders contemplated under sections 260(b) and 275(c) and the cease and desist order described in section 274(e)(2). Voice-Tel asserts that cease and cease and desist orders are the same and that the language between sections 260 and 275 differs only because section 274 gives the complainant the option of obtaining relief in federal court.

157. Commenters are evenly divided, however, on the issue of whether the Commission must follow the procedures prescribed in section 312 of the Act before issuing cease and cease and desist orders in Title II complaint proceedings. Bechtel & Cole, GST, KMC, MFS, and TRA argue that, in light of the requirement in the 1996 Act for prompt issuance of cease orders in cases alleging violations of sections 260 and 275, Congress did not intend for section 312 hearings to apply to cease and cease and desist orders pursuant to section 208 and related Title II complaint proceedings. These commenters argue that the application of section 312 show cause hearings would contravene Congressional intent. Bell Atlantic, CompTel, PTG, and SWBT, on the other hand, contend that section 312 hearings are a prerequisite to the issuance of any cease or cease and desist order pursuant to the Act. These commenters maintain that the D.C. Circuit Court decision in *General Telephone Co. of California* v. *FCC* (''*General Telephone*'') establishes that section 312 show cause hearings are required before the Commission can issue cease and cease and desist orders.

c. Discussion. 158. Congress clearly distinguished between cease orders in sections 260 and 275 and cease and desist orders in section 274. Both sections 260(b) and 275(c) provide that, if a complaint contains an appropriate showing of a violation that results in material financial harm, the Commission ''shall,'' within 60 days, issue an order directing incumbent LECs to ''cease engaging in'' the violation pending resolution of the complaint. Section 274(e)(2), on the other hand, authorizes ''any person'' claiming that a BOC or BOC affiliate has violated section 274 ''to make application'' to the Commission or the federal district courts for a cease and desist order, but does not specify circumstances in which a cease and desist order must be issued. In addition, unlike sections 260(b) and 275(c), section 274(e)(2) contains no deadline for Commission action on applications for cease and desist orders, nor does it predicate issuance of such orders on a showing of material financial harm by the petitioner. We therefore disagree with VoiceTel's argument that Congress intended section 260 and 275 cease orders to be identical to section 274 cease and desist orders.

159. Based on the express language of sections 260(b) and 275(c), we conclude that any order issued by the Commission pursuant to these sections must be in the nature of an injunction directed against a defendant incumbent LEC pending a final determination on the merits of a complainant's discrimination claims. As is customarily the case with permanent or preliminary injunctive actions, orders issued under sections 260(b) and 275(c) directing a LEC to ''cease engaging in'' a particular act will either be discharged or made final depending on the outcome of the complaint. We further conclude that, apart from the interim enforcement actions authorized under sections 260(b) and 275(c), the Commission retains discretion under section 4(i) of the Act to entertain requests for interim relief in other Title II complaint proceedings involving alleged violations of the Act or our rules and orders. We disagree with commenters who claim that section 312 procedures must be applied to requests for cease orders under sections 260(b) and 275(c), particularly since these sections make it clear that the complainants, not the Commission, have the burden of proof. By contrast, section 312(c) states that ''both the burden of proceeding with the introduction of the evidence and the burden of proof shall be upon the Commission.'' The commenters' reliance on *General Telephone* is misplaced. That case stands for the proposition that the Commission may properly invoke section 312(b) in carrying out its functions under Title II, not that the Commission is compelled to use section 312 procedures in determining if a carrier should be required to discontinue a particular practice on a temporary or interim basis. Sections 260(b) and 275(c), and section 4(i) generally, clearly empower the Commission to act promptly to restrain, on a temporary or interim basis, apparent or *prima facie* violations of the Act and our rules and orders without resorting to section 312 procedures.

160. With regard to cease and desist orders under section 274(e)(2), we conclude that Congress intended to assign the same meaning to ''cease and desist'' orders in section 274(e)(2) as used for ''cease and desist'' orders in section 312 of the Act. Section 274(e)(2) simply authorizes parties to petition the Commission for cease and desist orders based on alleged violations of the requirements of section 274. There is no support in section 274 or elsewhere in the Act for applying procedures other than those prescribed in section 312 for acting on requests for such cease and desist orders. We conclude that, in contrast to the permanent or preliminary injunctive relief required under sections 260(b) and 275(c), Congress intended the cease and desist orders contemplated under section 274(e)(2) to be in the nature of final injunctive orders to be issued in conformance with the notice and opportunity for hearing requirements of section 312 of the Act.

2. Legal and Evidentiary Standards. a. The *NPRM.* 161. We proposed to amend our rules to delineate the legal and evidentiary standards necessary for obtaining cease and cease and desist orders pursuant to Title II of the Act and other forms of interim relief in section 208 formal complaint cases. We noted that creating minimum legal and evidentiary standards would expedite the issuance of cease and cease and desist orders within statutory deadlines and create more certainty in the industry as to the legal and factual basis for obtaining such injunctive or interim relief. We noted further that, when a court considers requests for various types of interim or injunctive relief, such as a temporary restraining order, it generally requires that the plaintiff demonstrate four factors: (1) likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of the injunctive relief requested; (3) no substantial injury to any other party; and (4) that issuance of the order will further the public interest. Courts have also required the posting of bond in some cases prior to granting interim relief.

162. Few parties responded in detail to our requests for comment in the *Sections 260, 274, 275 NPRM* regarding (1) the ''appropriate showing'' required for the Commission to issue a ''cease'' order pursuant to section 260(b) or 275(c); (2) whether it would be sufficient for the complainant to make a *prima facie* showing of discrimination to obtain a cease order; (3) the meaning of ''cease engaging in'' under sections 260(b) and 275(c); and (4) whether sections 260(b) and 275(c) give the

Commission the authority to issue a cease and desist order similar to the action contemplated in section 274(e)(2) and, if so, whether the showing required to obtain cease orders and cease and desist orders should differ in any material way. Accordingly, the *NPRM* sought additional comment on these issues and emphasized that all comments pertaining to enforcement issues in response to the *Sections 260, 274, 275 NPRM* would be incorporated by reference into the instant proceeding. We also asked parties to comment on (1) the meaning of the terms ''material financial harm'' as used in sections 260 and 275; (2) whether a showing of material financial harm should also be required in order to obtain a cease and desist order under section 274; and (3) the level of proof required to establish material financial harm in the context of a section 208 complaint proceeding.

b. Comments. 163. Many of the commenters, including BellSouth, CompTel, PTG, NYNEX, SWBT, and U S West, support the use of the traditional four-prong injunction test articulated in *Virginia Petroleum Jobbers* (i.e., likelihood of success, threat of irreparable harm, no substantial injury to other parties, and the furtherance of the public interest) for issuing cease orders pursuant to sections 260 and 275 and cease and desist orders pursuant to section 274. These commenters claim that this test will minimize the chance of harm to a carrier should the allegations ultimately prove to be groundless. GST, CompTel, KMC, MFS, and PTG also argue that complainants should be required to post a bond to pay for the carrier's damages if the Commission later finds that the complaint was without merit.

164. TRA, ICG and the cable entities argue for more relaxed standards, especially for resellers and small market entrants. They urge the Commission to retain only the elements of the traditional test relating to advancement of the ''public interest'' and ''no substantial injury to other parties.'' ICG contends that the ''likelihood of success'' and ''irreparable harm elements'' inherently favor the status quo, which is contrary to Congress' goal of expediting effective local exchange competition. According to the cable entities, the Commission should require a moving party to show only that it has mounted a ''substantial challenge'' to a carrier's practice. TRA recommends that if the Commission decides to apply the traditional four-part test for injunctive or interim relief, it should define ''irreparable harm'' to include a showing of ''serious damage to a resale carrier's business.''

165. The Alarm Industry Communications Committee (''AICC'') and Voice-Tel argue that a *prima facie* showing of discrimination should be sufficient to warrant issuance of a cease order against an incumbent LEC pursuant to either section 260(b) or section 275(c). ATSI contends that an ''appropriate showing'' for a cease order under section 260 would be a complainant's showing it had requested service or access from an incumbent LEC and that such request was denied or unduly delayed in violation of section 260 on more than one occasion and that such violations would continue absent a cease order. According to ATSI, the Commission should apply the following two presumptions in considering requests for cease orders in such cases: (1) if any incumbent LEC is offering a basic service pursuant to section 260, then any other incumbent LEC should have the capability to do the same; and (2) if an incumbent LEC has the capability to provide telemessaging service, then a telemessager should be able to access the LEC's network for purposes of providing similar telemessaging service.

166. Bell Atlantic argues that a cease or cease and desist order could be issued under sections 260, 274, or 275 only if a complainant produces facts that show that (1) the alleged discriminatory behavior has occurred or will soon occur, (2) that the behavior violates the Act and/or the Commission's rules, and (3) that it has or will cause substantial harm to the complainant. PTG contends that cease orders should be issued pursuant to section 260 only after the complainant has shown by a preponderance of the evidence that an incumbent LEC has violated section 260(a) and that the violation was the proximate cause of the complainant's material financial harm. PTG argued that an order to ''cease engaging'' under sections 260 and 275 should be more difficult to obtain than an order to ''cease and desist'' under section 274 because sections 260 and 275 require a showing of ''material financial harm.'' SWBT contends that the standard under section 274(e), which authorizes any person to ''make application to the Commission'' for a cease-and-desist order, should be at least as demanding as § 1.722 of the Commission's rules, which requires complainants seeking damages to demonstrate or quantify the harm suffered or damages incurred with reasonable certainty. SWBT maintains that cease orders under sections 260(b) and 275(c), on the other hand, should require more stringent proof because those sections direct the Commission to issue such orders upon an appropriate showing of material financial harm in the complaint. Voice-Tel asserts that the Commission's authority under sections 260, 274 and 275 is the same, contending that the language between the two provisions is different only because section 274 gives the complainant the option of obtaining relief in federal court.

167. Several commenters contend that what constitutes material financial harm under sections 260 and 275 should be decided on a case-by-case basis. AICC, ATSI, and Voice-Tel proposed that all cases involving denial of access or delay would always result in material financial harm and that material financial harm need not be quantified in such cases. BellSouth maintains that a showing of material financial harm must establish a causal relationship between the harm and the defendant carrier's actions and should exclude unsupported claims of ''lost opportunity.'' According to PTG, a showing of material financial harm should consist of testimony, supported by affidavit, regarding (1) the magnitude of the alleged harm; (2) the relationship of the harm to the alleged violation, and (3) the impact of the harm on the complainant's business prospects. PTG, SWBT, and USTA all argue that a *prima facie* case of material financial harm must include some quantification of the alleged harm.

168. Finally, none of the commenters, either in this proceeding or in the *Sections 260, 274, 275 NPRM,* addressed the issue of whether a showing of material financial harm, as the term is used in sections 260 and 275, should also be required in order to obtain a cease-and-desist order under section 274, although some argued that the same standards and procedures should (or should not) apply to cease and cease and desist orders.

c. Discussion. 169. Notwithstanding our proposals in the *NPRM,* we conclude that, apart from the specific requirements set forth in the Act and our implementing rules and orders, it is unnecessary at this time to prescribe the legal and evidentiary showings required to obtain cease orders in section 260(b), 275(c), and other section 208 complaint proceedings. We similarly conclude that we need not delineate the showing needed for a cease and desist order under section 274(e)(2). The commenters differ sharply over these issues. Many argue that the four-pronged test set forth in *Virginia Petroleum Jobbers* should be relaxed to promote the pro-competitive goals of the Act, while an equal number contend that the *Virginia Petroleum Jobbers* standard, or its equivalent, is necessary to protect the due process rights of defendant carriers. After weighing the various comments, we conclude that it is more appropriate to consider requests for interim or injunctive relief on a case-by-case basis. It is impossible to anticipate all of the various factual circumstances that could form the basis of a complaint. Similarly, the level and types of information necessary to sustain or refute allegations of misconduct by carriers is likely to vary widely. We note that the rules we adopt today will foster our ability to consider requests for interim and injunctive relief and to order such relief promptly in appropriate cases. In particular, our pre-filing settlement discussion requirement should promote the ability of both complainants and defendants to ascertain the legal and factual bases of their dispute and submit detailed, fact-based complaints and answers accordingly. Our new format and content requirements are designed to ensure that both complaints and answers contain full legal and factual support for or against the relief requested in the complaint. Thus, as a practical matter, we do not anticipate that the absence of specific legal and evidentiary guidelines in this Report and Order will require complainants and defendant carriers to incur any additional or otherwise unreasonable burdens in presenting and defending against requests for interim injunctive relief.

170. We also conclude that we need not describe the specific showing required of a complainant to establish ''material financial harm'' within the meaning of sections 260 and 275 of the Act. Generally, a complainant alleging material financial harm will be expected to demonstrate some nexus between its financial condition or results and the defendant carriers' allegedly unlawful behavior within the meaning of sections 260 or 275 during the period at issue in the complaint. In addition, the plain language of sections 260 and 275 indicate that Congress sought to enjoin only those activities that would cause material financial harm, rather than any financial harm whatsoever. Beyond these guidelines, we do not believe it necessary or appropriate to delineate specific factual situations that would satisfy this burden since the evidentiary proof of material financial harm will likely vary widely in different cases. We agree with PTG, SWBT, and USTA, however, that allegations of material financial harm should be supported by documentation and affidavits sufficient to enable the Commission to quantify such harm with reasonable certainty.

J. Damages

1. Bifurcation by the Commission and the Supplemental Complaint Process. a. The *NPRM.* 171. In the *NPRM* we sought comment on whether the Commission legally could and/or should bifurcate liability and damages issues on its own motion in certain circumstances. In our experience, the damages phase of the formal complaint process is often cumbersome and protracted largely due to the scope and magnitude of discovery typically requested to substantiate or refute damages claims. The Commission noted that damages discovery is a waste of the time and resources of both the Commission and the parties when no violation or liability is found. The Commission further noted that the deadlines mandated by the new statutory complaint provisions allow very little time for complainants to present evidentiary arguments sufficient to establish both a violation of the Act and a proper measure of damages incurred as a consequence of such violation within the applicable deadlines. We stated in the *NPRM* that our goal was to eliminate or minimize the delay that is often inherent in damages issues.

172. In the *NPRM,* we proposed to encourage complainants to bifurcate voluntarily their liability and damages issues by reserving the right to voluntarily file a supplemental complaint for damages after liability has been determined. This procedure was available under the previous rule § 1.722(b). Where a complainant voluntarily bifurcated a complaint proceeding using the supplemental complaint procedure, the Commission would defer adjudication of all damages issues until after a finding of liability. We proposed that a complainant's use of this provision in a formal complaint proceeding subject to a statutory deadline would enable the Commission to make a liability finding within such deadline and still preserve the complainant's right to establish a damage award under a less pressing schedule. We noted that, while bifurcation could result in a faster complaint proceeding if no liability were found, the overall proceeding could be significantly longer if liability was found and damages were decided in a second, separate proceeding. We emphasized, however, that complainants would want to avail themselves of the supplemental complaint bifurcation approach in most instances to avoid the possibility that the deadlines would not provide them with enough time to develop their damages claims. We noted that bifurcation through the voluntary supplemental complaint process would be particularly appropriate in those cases in which a complainant sought both prospective relief and damages incurred as the consequences of a defendant carrier's violation of the Act or a Commission rule or order. For example, we stated that a decision by the Commission requiring a defendant carrier to terminate a particular practice or to provide service to a complainant under more reasonable terms and conditions would constitute a final, appealable order, as would a decision denying a complainant such relief. This would be the case even if issues of damages remained to be resolved as a result of the complainant's decision to file a supplemental complaint. We sought comment on the relative benefits to be gained by bifurcating liability and damages issues in section 208 proceedings through complainants' voluntary use of the supplemental complaint process. We also asked parties to identify bifurcation standards that might help ensure that both liability and damages issues are fully resolved within the earliest practicable time frame.

b. Comments. 173. Bell Atlantic and NYNEX comment that the Commission currently has the authority to bifurcate a complaint without the complainant's acquiescence. BellSouth argues that not all complaints are appropriate for bifurcation.

174. The majority of commenters support voluntary bifurcation of liability and damages issues. CompTel, GST, ICG, KMC, MCI, MFS, TCG, and TRA support bifurcation only if it is voluntary. CompTel argues that forced bifurcation could impair a complainant's due process rights by causing undue delay. ICG argues that complainants need assurances that their damages claims will be resolved promptly following a finding of liability with expedited discovery. TRA argues that bifurcation should remain voluntary in light of the delay in recovering damages which is inherent in a bifurcated proceeding.

175. CBT argues that bifurcation will reduce the time pressure of resolving claims within five months because each phase of the case will be simpler to deal with and, if liability is not established, the damages claim will no longer be at issue. CBT argues further that such bifurcation will result in a less compressed schedule and, therefore, increase discovery opportunities. CBT contends, however, that the damages phase would still have to be resolved

within the statutory deadline. GTE argues that bifurcation will prevent the domination of discovery with damages issues. GTE and NYNEX assert that once liability is found, a defendant will have more incentives to settle informally. NYNEX argues that the proposed bifurcation rules will make it easier for the Commission to resolve substantive liability issues within the statutory deadlines while preserving the rights of the parties to a full investigation into injury and damages. NYNEX further argues that bifurcation decreases unnecessary costs, as a complainant will not have to go through the expense of quantifying its damages until it has prevailed on liability. TRA asserts that bifurcation benefits the parties because it will speed the resolution of liability issues and preclude unnecessary expenditures of time and resources. SWBT contends that bifurcation will be beneficial to the parties because the substantial time required to resolve damages issues will not be wasted where no liability is found. GST, KMC and MFS argue that bifurcation benefits the parties because the extensive discovery required for damages issues will not be unnecessarily undertaken if no liability is established.

176. MCI argues that the statutory deadline for a particular formal complaint should be applied separately to each phase because otherwise the parties would not have sufficient time to develop their cases fully. TRA asserts that bifurcation effectively waives any statutory deadline with regard to damages issues. TCG argues that bifurcation will enable the Commission to make a liability finding within the statutory deadlines and preserve a complainant's right to a damages award.

177. PTG, GST, and Ameritech seek clarification that a complainant must establish ''injury'' for a finding of liability to proceed to the damages phase in a bifurcated proceeding. PTG argues that ''injury'' is a necessary element of liability, however, it is not interchangeable with ''damages'' which are the quantification of losses that result from an injury.

c. Discussion. 178. We find that the Commission has discretion to bifurcate liability and damages issues on its own motion pursuant to section 208(a) of the Act. Section 208(a) authorizes the Commission ''to investigate . . . matters complained of in such manner and by such means as it shall deem proper.'' We note, however, that the Commission only has such discretion to the extent that such bifurcation will not violate the statutory deadline applicable to the complaint as filed. Therefore, all claims, that are subject to a statutory complaint resolution deadline and include a properly supported request for damages, require that the Commission issue a final order within the deadline on both the liability and damages claims.

179. However, we both permit and encourage complainants to use the supplemental complaint procedures to separate liability and damages issues voluntarily such that damages issues will be resolved in separate formal complaints. By using the term ''bifurcate'' in connection with the supplemental complaint procedures, we contemplate the filing of two separate complaints: (1) the initial complaint for liability and any applicable prospective relief; and (2) the supplemental complaint for damages. Resolution of the liability and prospective relief issues on the complaint that only seeks a determination of those issues complies with the applicable statutory deadline because such a determination resolves all issues properly brought before the Commission. The damages issues will not have been brought before the Commission until, and unless, the supplemental complaint for damages is actually filed. We modify § 1.722 of the rules to clarify this procedure.

180. Given the new complaint provisions, requiring final Commission orders resolving certain complaints within specified time frames, encouraging the parties to separate their liability and damages claims into separate complaints is the most practical means to focus scarce resources on the determination of liability issues and, when necessary, granting prospective relief quickly. In addition, in cases where no liability has been found, significant resources will have been saved as a damages complaint will not have been necessary. Promoting voluntary separation of liability and damages issues is consistent with the pro-competitive goals and policies underlying the 1996 Act's complaint resolution deadlines and will not adversely affect the Commission's ability to resolve complaints raising competitive and other marketplace disputes on an expedited basis. On the contrary, such separation will enable the Commission and the parties to focus initial resources on addressing allegations of anti-competitive conduct and any necessity for prospective injunctive relief.

181. We disagree with CBT's assertion that a complainant should be required to prosecute its liability and damages claims in a single complaint. Nothing in the Act prohibits a complainant from choosing to bring its liability and damages claims in separate complaints. The supplemental complaint process is voluntary and the decision to pursue damages in a separate proceeding is made solely by the complainant. Further, the Commission has no basis on which to make a finding regarding damages if such claims have not yet been presented by the complainant. Thus, a decision on a liability complaint that reserves the right to file a supplemental complaint for damages is a final decision on all matters the complainant has presented to the Commission in its complaint.

182. As a policy matter, we note that a notice of intent to seek damages in a supplemental complaint contained in a complaint for liability has the effect of tolling the statute of limitations for damages claims. Moreover, a complainant may file a supplemental complaint for damages following a finding of liability even if it gave no notice of such intent at the time it filed its original complaint. Thus, the distinction between the treatment of a supplemental complaint for damages when the complainant gave notice of its intent to file such supplemental complaint in its complaint for liability and when the complainant failed to give notice of its intent to file such supplemental complaint in its complaint for liability is solely the period of time for which damages may be assessed against a defendant. Under the circumstances, a rule that would require complainants to prosecute damages within the statutory deadline, regardless of whether the complainant chose to reserve its right to file a supplemental complaint for damages, would, in fact, shorten the statute of limitations for bringing complaints for damages in those complaints that are subject to a statutory resolution deadline. We do not find that it was the intent of Congress to limit the rights of complainants in this manner.

183. We find that complainants will elect to pursue their liability and damages claims in separate proceedings because it will be to their advantage to postpone expending time and money developing proof of their damages claims until after liability and issues of prospective relief have been established. Complainants will also benefit from being provided an extended period within which to support their damages claims factually. Most importantly, complainants will benefit from swifter resolution of liability issues through the filing of separate complaints for the resolution of liability and damages issues, and, therefore, swifter provision of the prospective relief needed to halt allegedly anti-competitive conduct. For this reason, the provision in the rules for complainants to file such separate

complaints is consistent with the Act's goal of timely resolution of competitive issues to open markets for all potential entrants and competitors, not just the parties to the complaint.

184. We also recognize the importance of swift resolution of damages complaints once the liability of a defendant carrier has been established. We agree with commenters who argue that many complainants will bifurcate liability and damages claims only if they expect that the Commission will conclude the damages phase rapidly. While we believe that parties will benefit substantially from complaint bifurcation in many instances, rules and polices must be in place to ensure resolution of damages complaints promptly and effectively. A paramount concern of a complainant seeking damages is to obtain monetary relief for harm suffered as a consequence of the defendant carrier's actions. Similarly, defendant carriers have an interest in quickly resolving any uncertainty about the amount or extent of their damages liability. Therefore, we will endeavor to resolve supplemental damages complaints in the same length of time within which the liability phase was resolved. As a general rule, damages proceedings will be resolved within the same amount of time required to rule on the preceding liability complaint. For example, a provider of alarm monitoring services that elects to file a supplemental complaint for damages, based on a finding by the Commission that the defendant carrier is liable for a violation of section 275 of the Act, can reasonably expect to have its damages claims resolved within a similar 120-day period. In addition, with respect to supplemental complaints for damages that are filed following a finding of liability on a matter that was not subject to a statutory deadline, we will endeavor to resolve such complaints within five months of the date of filing. This approach furthers the intent underlying the deadlines that Congress established for different types of complaints. Establishing rules and policies that promote swift determination of damages claims provides a significant incentive for common carriers to comply with the Act and the Commission's rules and orders. It also gives all complainants reasonable assurances of the length of time a damages phase is likely to take. Such information will help parties that plan to seek damages weigh the benefits of bifurcating the liability and damages aspects of their claims prior to filing a complaint with the Commission.

185. We also recognize that damages complaints often raise issues of extraordinary factual and/or legal complexity, the resolution of which may require substantial expenditures of time and resources by the parties. In the paragraphs below, we discuss rules that are designed to facilitate the computation of damages by complainants and defendants and promote the prompt resolution of damages disputes. We believe that these rules will help us attain our goal of resolving all damages complaints within five months from the date filed. Nonetheless, we believe that cases of extraordinary complexity could require substantially more time. As a general rule, we will endeavor to resolve such complex complaints within twelve months from the date filed.

186. We recognize the distinction commenters make between ''injury'' and ''damages,'' and agree that a party that has not shown that it suffered an injury has not met a threshold requirement for substantiating a claim for damages. We disagree, however, with the assertion by these commenters that a determination of ''injury'' in a liability complaint is necessary to proceed to a supplemental complaint for damages when a complainant chooses to use the supplemental complaint procedures. Contrary to the commenters' claims, proof of ''injury'' is not necessary to establish a violation of the Act within the meaning of section 208. Section 208 of the Act only requires proof that the defendant carrier has violated the Act or a Commission rule or order for a complainant to prevail. Additionally, determining whether an individual complainant has been injured and is entitled to monetary damages does not further the pro-competitive goals and policies underlying the 1996 Act in the same way that addressing allegations of anti-competitive conduct and the need for injunctive relief does. That is, the question of injury goes to the resolution of an individual dispute rather than the resolution of a disputed issue that affects competition in an industry. For that reason, we conclude that, where the fact of injury does not need to be established to prevail on the issue of liability in a complaint proceeding, a prior determination of injury is not a prerequisite to the filing of a supplemental complaint for damages. A complainant must always, however, prove injury and quantify its monetary damages with reasonable certainty to prevail on its claim for damages.

2. Detailed Computation of Damages. a. The *NPRM*. 187. In the *NPRM* we proposed to require that any complaint or supplemental complaint seeking an award of damages contain a detailed computation for such claim. That is, every complaint for damages would include a computation for every category of damages claimed, as well as identification of all documents or material on which such computation was based. For example, in cases in which a complainant is challenging the reasonableness of charges or rate levels applied by a carrier to particular services taken by the complainant, the complainant's computations would have to identify clearly the precise nature of the service taken and applicable charges broken down by such factors as minutes of use, traffic mileage and volume, as well as any applicable discounts or other adjustment factors.

b. Comments. 188. ACTA, BellSouth, CBT, GST, KMC, MFS, NYNEX, and U S West support requiring complaints seeking an award of damages to contain a detailed computation of damages claimed. SWBT asserts that such a requirement should reduce the filing of frivolous claims for speculative damages that are not subject to proof. GST, KMC and MFS argue that such a requirement should encourage settlement by clarifying a party's claim. The cable entities and MCI oppose such a requirement, expressing concern that complainants may not have access to sufficient information prior to discovery to prepare and submit detailed damages computations or computation formulas.

189. ICG argues that the proposed detailed computation of damages should only be required to be made in good faith and that complainants should be provided with the opportunity to amend the complaint to reflect an updated computation of damages following discovery. MCI argues that requiring the complaint to contain a detailed computation of damages would violate a complainant's due process rights and suggests, as an alternative, requiring a complainant to outline its damages methodology and identify what damages information it lacks. While they do not oppose the proposed requirement that a complaint contain a detailed computation of damages, U S West argues that the Commission must take into account the reasonable availability of necessary information, and TRA asserts that the Commission must be careful not to impose an overly rigid or binding requirement with regard to a detailed or definitive damages calculation prior to the receipt of an answer and completion of discovery.

c. Discussion. 190. After considering the concerns raised by the commenters, we modify the proposed rule. We require that a complainant seeking damages must file in its complaint or supplemental complaint either a detailed computation of damages or a detailed explanation of why such a computation is not possible at the time of filing. Commenters raise valid concerns about the ability of complainants to substantiate damages claims at the beginning of a formal complaint proceeding. In light of these considerations, we require all complaints or supplemental complaints seeking an award of damages to contain either:

(a) A detailed computation of damages, including supporting documentation and materials; or

(b) An explanation of:

(i) What information not in the possession of the complaining party is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists; and

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

191. This rule strikes the appropriate balance between the need for complainants to be diligent in establishing their claims and our recognition that, in certain instances, a complainant may not possess sufficient facts at the initial stages of a complaint proceeding to prepare a detailed computation of damages alleged. This rule also is consistent with the Commission's adoption of a policy of encouraging complainants to have damages claims resolved separately from liability issues using the supplemental complaint process, because it provides the complainant with the benefit of additional time to develop and support factually an accurate computation of damages following a finding of liability. It would have been unduly burdensome to require a complainant who has been unable to obtain access to substantiating information, after it has made good faith efforts to obtain such information, to support factually its damages claim without providing a means to substantiate such claims. Further, such a rule would have reduced the incentives on defendants to negotiate damages issues in good faith.

3. Ending Adjudication With a Determination of the Sufficiency of a Damages Calculation Method. a. The *NPRM* 192. In the *NPRM* we proposed that the Commission's adjudication of damages should end with a determination of the sufficiency of the computation method submitted by the complainant, instead of making a finding as to the exact amount of damages incurred. We stated that the benefit of such a procedure would be that the Commission would be spared the detailed and time-consuming investigation of the facts necessary to establish an exact amount of damages. As an example of how such a procedure would be implemented, we noted that a similar procedure is used in complaints dealing with pole attachments. We sought comment on this proposal.

b. Comments. 193. CBT, CompTel, GST, and SWBT oppose a rule ending the Commission's adjudication of damages with a determination of the sufficiency of the computation method. CBT and CompTel argue that parties will be unable to resolve issues remaining in dispute, such as the numbers to be plugged into an approved method. CBT argues that such disputes will require further Commission involvement to resolve. GST argues that parties are entitled to a final resolution of all substantive issues, a category it contends includes the actual amount of damages incurred. SWBT argues that because such a procedure would not require a complainant to meet its burden of proof, it would be a denial of a defendant's due process rights. AT&T supports this proposal if the Commission remains available to resolve further disputes among the parties and provide a final resolution if the parties cannot agree to one.

c. Discussion. 194. In cases where liability and damages claims have been severed using the supplemental complaint process, the Commission may end adjudication of damages with a determination of the sufficiency of the damages computation method submitted by the complainant. After considering the concerns raised by the commenters, we modify the proposed rule to reflect that if the Commission finds the damages computation submitted by the complainant unsatisfactory, the Commission may, in its discretion, modify such computation method or require the complainant to resubmit such computation. In addition, the rule specifically prohibits the computation method from incorporating an offset for a claim of a defendant against a complainant. To ensure the parties are diligent in their negotiations to apply the approved calculation method, we shall require that, within thirty days of the date the damages computation method is approved and released, the parties must file with the Commission a joint statement which will do one of the following: (1) detail the parties' agreement as to the amount of damages; (2) state that the parties are continuing to negotiate in good faith and request that the parties be given an extension of time to continue such negotiations, or (3) detail the bases for the continuing dispute and the reasons why no agreement can be reached. In this way, the Commission will monitor the parties' compliance with its directive to negotiate a resolution of the dispute in good faith using the mandated computation method.

195. This rule permits the Commission to avoid the detailed and time-consuming investigation of the facts necessary to establish an exact amount of damages where such investigation may reasonably be delegated to the parties. At the same time, however, it provides a means for parties to return to the Commission for resolution of ongoing disputes if parties are unable to agree to a final amount of damages. This rule encourages good faith negotiation among the parties by requiring parties to provide detailed explanations if they fail to resolve their dispute. We emphasize that the Commission will always retain the right to determine the actual amount of damages in those cases where the establishment of damages does not lend itself to such a means of resolution. We also conclude that requiring parties to reach an agreement within a limited time addresses the concerns raised by some commenters that the parties would have no recourse if they are unable to apply a damages computation method successfully.

4. *Settlement Period.* a. The *NPRM.* 196. In the *NPRM* we proposed, in conjunction with the proposals to resolve liability and damages claims separately using the supplemental complaint process, to set aside a limited period, following a finding of liability and prior to the damages phase, during which the parties could engage in settlement negotiations or submit their damages claims to voluntary ADR mechanisms in lieu of further proceedings before the Commission.

b. Comments. 197. GST, SWBT, TRA and U S West support setting aside a limited time period, following a finding of liability, in which to encourage settlement and/or participation in ADR. SWBT asserts that a finding of liability increases the defendant's incentive to settle. U S West argues that the Commission does not go far enough and that ADR procedures should be used wherever possible to resolve entire complaints.

c. Discussion. 198. In cases where liability and damages claims have been severed using the supplemental complaint process, the Commission may suspend proceedings for a period of fourteen days following the filing of a supplemental complaint for damages, to allow parties to attempt to negotiate a settlement or use ADR procedures. The staff has the discretion to delay this period until later in the damages phase, when warranted by the facts of an individual case.

199. Encouraging parties to settle their disputes is in the interests of the Commission and the parties. Commenting parties recognize the benefits of settlements reached by the parties and support the establishment of this settlement period to further settlement negotiations. The timing of this settlement period is especially useful because it follows the determination of liability. A finding of liability will increase the parties' incentives to settle, as a major issue formerly in dispute will have been resolved. We recognize, however, that information disclosures may be necessary in some cases for parties to assess adequately the amount of damages incurred. In such cases, a settlement period immediately following the filing of the supplemental complaint for damages may be too early in the proceeding to be useful. Providing the staff with the discretion to delay the settlement period until after information disclosures have been made maximizes the Commission's ability to encourage settlement on a case-by-case basis.

5. Referral of Damages Issues. a. The *NPRM.* 200. In conjunction with the proposals to resolve liability and damages claims separately using the supplemental complaint process, we sought comment on the benefits of referring damages issues to ALJs for either decision following a finding of liability or, by agreement of the parties, mediation. We noted that such referral would be at the discretion of the Commission staff pursuant to delegated authority, depending on the particular facts and circumstances involved. We also sought alternative proposals that would serve to minimize or reduce the need for costly and protracted proceedings on the issue of damages.

b. Comments. 201. Commenters generally support the referral of damages issues to ALJs. ICG compared this procedure to the federal courts' use of special masters. BellSouth suggests that parties should have the option of mediation or referral to a special master. KMC asserts that parties need to have the right to appeal any decision on damages made by an ALJ. GTE argues that the ALJ should have the authority to request production of evidence. GTE seeks clarification that an ALJ's authority would be restricted to the resolution of damages issues.

c. Discussion. 202. We adopt a rule authorizing the Chiefs of the Common Carrier Bureau and Wireless Telecommunications Bureau to refer damages disputes to ALJs for either decision following a finding of liability or, by agreement of the parties, mediation. This rule would work in conjunction with cases in which liability and damages claims have been severed using the supplemental complaint process. The commenters generally support the use of ALJs to resolve damages issues. We conclude, despite GTE's concerns regarding the authority of ALJs in damages hearings, that special rules or procedures are not needed to guide the ALJs in their deliberations given the narrow focus of damages proceedings. The hearing rules provide for the designation of specific issues in the hearing designation order. Once liability has been determined, the question of damages is largely a factual one. ALJs are expert triers of fact well suited to conduct fact-finding proceedings. Regarding appeals of ALJ decisions, we note that the ALJ hearing rules provide the means for parties to seek review of an ALJ decision. If the parties agree to mediation, however, the right to seek review of the ALJ's mediation resolution would be contained within the terms pursuant to which the parties agreed to such mediation.

6. Deposit of Funds into an Escrow Account. a. The NPRM. 203. In the NPRM we proposed that the Commission be given discretion to require a defendant to place a deposit in an interest-bearing escrow account following a finding of liability in cases in which liability and damages claims have been severed using the supplemental complaint process. The purpose of such a deposit would be to cover all or part of the damages for which the defendant carrier may be found liable in order to provide a complainant with some assurance that a judgment can be readily collected. We proposed that, in exercising this discretion, the Commission would apply standards similar to those used to determine whether a preliminary injunction is appropriate. We emphasized that the Commission would not administer any such account. We sought comment on this proposal as well as alternative proposals that would serve to facilitate and expedite the resolution of damages claims.

b. Comments. 204. Commenters are split over whether or not the Commission could or should require the deposit of funds into an escrow account following a finding of liability. AT&T, TRA, GST, KMC and MFS support such a procedure. AT&T, GST, KMC and MFS further support allowing the posting of a bond as an alternative to depositing funds into an escrow account as a means to ensure payment. GST, KMC, and MFS argue that preliminary injunction standards do not need to be met to require such a bond because liability will already have been determined. GST, KMC, and MFS argue that the Commission should require a showing of irreparable harm and the likelihood that the defendant will default on the damages award before requiring the posting of a bond or the deposit of funds into an escrow account.

205. CBT, SWBT, GTE, and PTG oppose the proposal, arguing that the Commission lacks authority to impose such a requirement. CBT, SWBT, and PTG argue that a Commission order for payment of damages pursuant to section 209 of the Act is not an enforceable money judgment. CBT and SWBT argue that prospective money damages are insufficient to justify a preliminary injunction, and that the proper compensation for any delay in a damages award is the payment of interest. PTG asserts that such a rule creates an unnecessary administrative burden in light of the fact that there is no evidence of a problem in collecting damages from carriers.

c. Discussion. 206. In cases in which liability and damages claims have been severed using the supplemental complaint process, following a finding of liability, the Commission shall have discretion to require a defendant either to post a bond for, or place in an escrow account, an amount the Commission determines is likely to be awarded, if such relief is justified following consideration of the following factors:

(a) The likelihood of irreparable injury in the absence of such a deposit;

(b) The extent to which damages can be accurately estimated;

(c) The balance of hardships between complainant and defendant; and

(d) Whether public interest considerations favor the posting of a bond or establishment of an escrow account.

207. Requiring the posting of a bond or the deposit of funds into an escrow account both protects against a defendant's future inability to satisfy an enforceable judgment and removes the benefit a defendant receives from delaying payment in a case. Contrary to what several commenters suggest, neither the posting of a bond nor the deposit of funds into an escrow account is the enforcement of a money judgment. The rule does not provide that a complainant may execute its judgment on the bond or account

following a Commission order of damages. The rule merely requires the bond or account to be set up as a protective measure. Further, this protective measure may only be taken following a finding of liability and a Commission assessment of likely damages.

208. Precedent for the Commission requiring a defendant to deposit funds into an escrow account following a determination of liability is found in *Western Union Telegraph Co.* v. *TRT Telecommunications Corp., and FTC Communications, Inc.*

7. Additional Suggestions From Commenters. a. The *NPRM.* 209. In the *NPRM* we sought alternative proposals that would serve to facilitate and expedite the resolution of damages claims and/or minimize or reduce the need for costly and protracted proceedings on the issue of damages.

b. Comments. 210. ACTA suggests that the Commission codify the procedure for a complainant to litigate damages in federal court following a finding of liability by the Commission.

211. GST suggests providing for targeted discovery during a damages phase, arguing such discovery should be limited to initial disclosures of witnesses, exchange of documents and one deposition for each party.

c. Discussion. 212. We decline to adopt ACTA's proposal to codify a procedure for litigating damages claims in federal court following a finding of liability by the Commission. The Act does not provide the Commission with the authority to establish federal court procedures. Although federal courts occasionally refer cases to the Commission for resolution of liability issues, while retaining authority over damages issues pending the Commission's liability determination, such referrals are initiated by the courts, not the Commission.

213. We decline to adopt GST's proposal to establish special discovery rules for a supplemental complaint proceeding. A supplemental complaint is a formal complaint that is limited to the issue of damages because the issue of liability has already been determined in a separate, prior proceeding. Supplemental complaints are, therefore, subject to the formal complaint discovery rules. We conclude that the formal complaint discovery rules are adequate to address damage claims and the creation of a separate set of discovery rules is unwarranted at this time.

K. Cross-Complaints and Counterclaims

214. The Act imposes new deadlines for actions on certain complaints ranging in length from ninety days to five months from the date of filing. The *NPRM* recognized that the filing of cross-complaints or counterclaims during a complaint proceeding could inhibit the Commission's ability to fully resolve disputes within the mandated time frames.

a. The NPRM. 215. We proposed to allow compulsory counterclaims only if filed concurrently with the answer, such that the failure to file with the answer would bar the defendant from filing such compulsory counterclaim. We also proposed that a defendant electing to file permissive counterclaims and cross-claims would be required to file such pleadings concurrently with its answer, leaving the defendant with the option of filing any barred permissive counterclaims or cross-claims in a separate proceeding, provided that the statute of limitations has not run. We also proposed to revise our rules to clarify the applicability of filing fees to complaints, cross-complaints, and counterclaims.

b. Comment. 216. CompTel and TRA support the Commission's proposals. Most commenters, however, oppose establishing a category of compulsory counterclaims that will be barred if not filed concurrently with an answer. AT&T, BellSouth, PTG, and NYNEX argue that the time to answer (twenty days) is insufficient to allow a defendant to answer the complaint, ascertain all possible counterclaims and prepare such counterclaims for filing and service in accordance with the proposed format and content requirements. GTE further argues that defendants may be reasonably unaware of their counterclaims prior to the date an answer is due. CBT, GST, KMC, and MFS suggest that compulsory counterclaims filed with the answer should not be subjected to the same high levels of evidentiary support as required of the complaint. AT&T and NYNEX support a rule requiring counterclaims and cross-complaints not filed concurrently with the answer to be brought in separate proceedings. CBT and U S West argue that the Commission's jurisdiction over counterclaims is limited to instances where both parties to a proceeding are carriers and the counterclaim involves an allegation of a violation by the complainant that could itself be the subject of a separate complaint before the Commission.

c. Discussion. 217. We require all cross-complaints and counterclaims to be filed as separate, independent actions. While the *NPRM* originally proposed to distinguish between the treatment of compulsory and permissive cross-complaints and counterclaims, we have decided that banning all cross-complaints and counterclaims is necessary in light of the statutory deadlines in the 1996 Act. Cross-complaints and counterclaims would not be filed until twenty days into an ongoing proceeding, thereby shortening the time within which the Commission may adequately consider and resolve such claims. Establishing a category of compulsory counterclaims, furthermore, would have created an inconsistency between the treatment of claims by complainants and counterclaims by defendants. Under such a rule, complainants would be permitted to file separate formal complaints based on claims arising out of the same transaction or occurrence as a pending formal complaint, but defendants would be barred from filing counterclaims once the answer had been filed.

218. The rule we adopt also satisfies the concerns of some commenters that the Commission only has jurisdiction to consider those claims that the defendant could have filed against the complainant independent of the ongoing litigation. That is, the Commission does not have the authority to assert pendent jurisdiction over disputes for which no independent jurisdictional ground exists. In light of both the time constraints within which the Commission must work and the nature of allowable cross-complaints and counterclaims, we conclude that all such claims are better treated as individual complaints. To preclude the possibility of inconsistent rulings on identical facts, a complainant filing a formal complaint that shares any factual basis with another formal complaint to which the complainant is a party, whether ongoing or finally resolved, must include this fact in such formal complaint and its accompanying formal complaint intake form. We note that, under the broad powers of section 208, the Commission always has the authority to consolidate separate complaint cases. Where appropriate, the staff will have discretion to consolidate cases so that all claims arising out of the same transaction or occurrence may be adjudicated in a single proceeding.

219. We decline to adopt our proposal to revise our rules to clarify the applicability of filing fees to cross-complaints and counterclaims. Such a rule would be moot in light of the rule adopted prohibiting all cross-complaints and counterclaims.

L. Replies

a. The NPRM. 220. We proposed to prohibit replies to answers unless specifically authorized by the

Commission. We noted that our rules made filing a reply voluntary, and that failure to reply was not deemed to be an admission of any allegation contained in the answer, except for facts contained in affirmative defenses. We proposed to authorize replies only upon a complainant's motion, filed within five days of service of the answer, showing good cause to reply to any affirmative defenses supported by factual allegations that were different from any denials also contained in the answer. We also proposed to provide that a complainant's failure to file a reply to an answer would be deemed a denial of any affirmative defenses.

221. We also proposed to prohibit replies to oppositions to motions. We stated our belief that such replies seldom aid the Commission in resolving factual or legal issues and were often used to repeat information already contained within the original motion itself. We sought comment on this and any other alternative proposals.

b. Comments. 222. Many commenters, including AT&T, BellSouth, GST, KMC, MFS, GTE, NYNEX, and TRA support our proposals to prohibit, in most instances, replies to defendants' answers. They agree that replies are unnecessary and redundant as long as complainants are deemed to have denied all affirmative defenses and are permitted to respond for good cause, such as a showing that a defendant has misrepresented pertinent facts. ATSI and the cable entities, however, argue that a reply is necessary to give a complainant the opportunity to respond to matters that might be raised for the first time in the answer and to withdraw claims that may have been satisfactorily addressed in the answer. NYNEX argues that a complainant should be permitted to file a reply to an answer if it is replying to an affirmative defense and it is relying on factual allegations that are different from any denials contained in the answer. ICG argues that prohibiting replies would generate more work for the Commission, in the form of responding to motions for leave to file replies.

223. Regarding our proposal to prohibit replies to oppositions to motions, PTG points out that § 1.727(f) of the Commission's existing rules already prohibits replies to oppositions to motions. CompTel, GST, KMC, MFS, and GTE assert that replies to oppositions to motions may be warranted where the opposition distorts facts or where matters are raised for the first time in the opposition.

c. Discussion. 224. We modify our proposed rule and permit complainants to file replies that respond only to affirmative defenses. We shall deem any failure to reply to an asserted affirmative defense as an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint. We note that the *NPRM* originally proposed to require parties to move for leave to file replies to affirmative defenses and that failure to reply to an affirmative defense would be deemed a denial of such defense. The rule we adopt departs from our proposal in the *NPRM* because we are persuaded by the commenters that requiring complainants to seek leave to file replies to affirmative defenses is likely to generate unnecessary work for the staff. Instead, we have chosen to limit replies to those that respond to new allegations raised in an answer in the form of affirmative defenses. Complainants will be required to support their replies to affirmative defenses in the same manner that they are required to support their claims in the complaint. This requirement will aid the staff by the presentation of specific evidence regarding each affirmative defense. General replies to answers, however, are often redundant and unnecessary because complainants simply repeat claims that were filed with the original complaint. Such general replies are prohibited. We do not modify the existing rule that prohibits replies to oppositions to motions.

M. Motions

225. The *NPRM* proposed to modify the rules pertaining to motions in order to enhance the efficiency of the formal complaint process, expedite the filing and consideration of motions, and eliminate unnecessary or duplicative pleadings.

1. The Filing of Motions. a. The *NPRM.* 226. In the *NPRM,* we proposed to require a party filing a motion to compel discovery to certify that it had made a good faith attempt to resolve the matter before filing the motion. We also proposed to eliminate motions to make the complaint ''definite and certain,'' stating that, under the proposed rules, complaints would have to be very definite and certain to avoid being dismissed at the outset.

b. Comments. 227. All parties that commented on this issue agree that the Commission should require certification of good faith attempts to resolve discovery disputes informally as a condition to the filing of any motion to compel. Commenters also support the proposal to eliminate motions to make a complaint more definite and certain. BellSouth supports eliminating motions to make complaints ''definite and certain'' as long as the Commission will consider motions to dismiss for failure to state a claim or failure to comply with procedural requirements.

c. Discussion. 228. We require a party that files a motion to compel answers to discovery requests to certify that it has made a good faith attempt to resolve the matter before filing the motion. We conclude, and commenting parties agree, that adoption of this rule will limit Commission involvement in conflicts that may be easily resolved by the parties themselves.

229. Motions to make the complaint ''definite and certain'' are prohibited, as such motions should be superfluous under the new format and content requirements for initial pleadings. BellSouth's suggestion that the Commission consider motions to dismiss is inapposite to our decision to eliminate motions to make a complaint ''definite and certain.'' The rationale for eliminating motions to make complaints more ''definite and certain'' is that our newly-adopted stringent pleading requirements will ensure the filing of complaints that are ''definite and certain.'' We do not intend to prohibit the filing of motions to dismiss a complaint for failure to state a claim or failure to comply with procedural requirements.

2. Oppositions To Motions. a. The *NPRM.* 230. In the *NPRM,* we stated our intent to expedite further formal complaint proceedings by modifying the rules regarding oppositions to motions. We proposed to make failure to file an opposition to a motion possible grounds for granting the motion, although the filing of oppositions to motions would remain permissive. Additionally, we proposed to shorten the deadline for filing oppositions to motions from ten to five business days.

b. Comments. 231. GST, KMC, MFS, NYNEX, and SWBT support the proposal to make failure to file an opposition to a motion possible grounds for granting the motion, arguing that it is reasonable to require a party to articulate its reasons for opposing a motion. ACTA, however, opposes such a proposal, arguing that if the failure to file an opposition can be grounds for granting a motion, the filing of an opposition will not be permissive in any real sense. AT&T warned that failure to file an opposition to a motion should not be an automatic basis for granting the motion.

232. Many commenters, including AT&T, BellSouth, GTE, PTG, SWBT, and TRA, support the shortening of the period to file an opposition to a motion to five business days. GTE suggests that the rules provide a procedure to seek an

extension of time to oppose a motion when circumstances warrant it. PTG suggests that motions be served by facsimile to give parties more time to respond. CBT opposes the shortening of time, arguing that more time is needed to respond to complex motions, and suggests instead that the time for filing be reduced to ten calendar days rather than five business days.

c. Discussion. 233. A party's failure to file an opposition to a motion is possible grounds for granting such motion. We note that the commenters misconstrue the meaning of the statement that it is ''permissive'' to file an opposition to a motion. This statement merely means that the Commission does not require a party to take affirmative steps to oppose a motion against it. This rule does not, however, alleviate any party's burden to represent fully its own interests before the Commission. Any party that chooses not to file an opposition to a motion runs the risk that the motion will be granted without consideration of that party's views. Because the Commission is prohibited from acting in an arbitrary and capricious manner, staff will not grant unopposed motions that are frivolous, inconsistent with the Commission's rules, or that may create unnecessary delay.

234. The deadline to file an opposition to a motion is five business days, with the time running from the date service is effective. Reduction of the number of days a party has to respond to a motion will speed up the motions process. We disagree with CBT's suggestion to use ten calendar days rather than five business days to determine filing due dates because we find that a reduction to ten calendar days will not save sufficient time in light of the statutory deadlines in the Act. Five business days will provide the opposing party with seven calendar days to prepare, file and serve an opposition, with exceptions for when a holiday falls in the five business day period. Ten business days would provide the opposing party with fourteen calendar days to prepare, file and serve an opposition, with exceptions for when a holiday falls in the ten business day period. In contrast to this, CBT's proposed ten calendar days would provide the opposing party with ten to thirteen calendar days, depending on the day of the week the motion is served and filed and the existence of holidays. In response to PTG's suggestion that motions be served by facsimile, we note that this proceeding adopts rules requiring service of motions by hand-delivery, overnight delivery, or facsimile transmission followed by mail delivery.

3. Format, Content, and Specifications of Motions and Orders. a. The *NPRM*. 235. To ease the burden on Commission staff in drafting decisional documents within short time frames, the *NPRM* proposed to require all pleadings seeking Commission orders to contain proposed findings of fact and conclusions of law with supporting legal analysis. The *NPRM* also proposed that all parties submit with their procedural or discovery motions and oppositions to such motions, proposed orders, in both hard copy and disk, that incorporate the legal and factual bases for granting the requested relief. The *NPRM* proposed that the computer disk submissions be formatted in WordPerfect 5.1, the wordprocessing system currently used by the Commission. Furthermore, we proposed to require parties to conform the format of any proposed order to that of a reported FCC order. Such proposals would reduce the burden on Commission staff in drafting orders and letter rulings by enabling the staff to either incorporate relevant portions of the parties' submissions into the required orders or use the parties' submissions in their entirety.

b. Comments. 236. ACTA and BellSouth agree with the proposal to require all pleadings seeking Commission orders to contain proposed findings of fact and conclusions of law with supporting legal analysis. ACTA states that the added cost to the parties of such submissions would be offset by the value of such filing in expediting the resolution of cases. On the other hand, MCI, PTG, and CBT argue that such inclusions would only be appropriate for certain pleadings, such as briefs or motions for summary judgment, because parties may be unprepared to make such conclusions prior to conducting discovery and reviewing opposing pleadings.

237. Commenters generally did not oppose the proposals to require parties making or opposing procedural or discovery motions to submit proposed orders, in both hard copy and disk, that conform to the format of reported FCC orders. CBT additionally suggests that parties be allowed to submit proposed orders in formats other than WordPerfect 5.1. MCI opposes requiring parties to submit proposed orders with their motions and oppositions proposal, arguing that such a rule will be largely inapplicable because most motions will be discovery motions, which are resolved by informal letter orders that are not in the format of Commission orders. NAD argues that this proposal will be too burdensome for consumers with disabilities.

c. Discussion. 238. After consideration of the comments received, we modify the rule proposed and will require only those pleadings seeking dispositive orders to contain proposed findings of fact and conclusions of law with supporting legal analysis. We define a dispositive order as an order that finally resolves one or more claims in a complaint. We conclude that this requirement is justified in these limited circumstances because it will help to ensure that issues and arguments are better framed and presented to the Commission. We agree with MCI, PTG, and CBT that such a requirement would not be appropriate for interlocutory motions, such as those seeking discovery or extensions of time. Requiring complete support for dispositive motions will decrease substantially the number of unnecessary motions filed with the Commission because parties will be reluctant to file motions for which they have no factual or legal basis. This requirement will also give Commission staff the option of incorporating the proposed findings of fact and conclusions of law with supporting legal analysis into orders, thereby easing the burden of drafting orders.

239. To further facilitate the drafting of orders and letter rulings, we adopt our proposals to require parties to submit with their procedural or discovery motions and oppositions to such motions, proposed orders, in both hard copy and disk, that incorporate the legal and factual bases for granting the requested relief. Although some commenters argue that such a requirement may often be inapplicable to discovery and too burdensome for persons with disabilities, we conclude that the benefits of such a rule justify it. The Commission anticipates addressing a large number of complaints on an expedited basis. In light of the Commission's limited resources, it will be of great assistance to Commission staff to have the relief sought or opposed by motion, and the basis therefore, set out clearly and concisely in a proposed order format. Having such a proposed order, in hard copy and on disk, will assist in the timely release of orders or letter rulings on motions. Requiring a party to articulate the relief sought in an order may also produce more clearly focused arguments. We also conclude that this requirement does not overly burden parties, who merely have to transfer a portion of the text of their motions or oppositions into the format of an order. Finally, if submission of such a draft order does place a large

burden on a particular party, the staff retains the discretion to waive this requirement on a case-by-case basis.

240. We modify our proposed rule concerning the submission of proposed orders on disk. We require that computer disk submissions be formatted in the Commission's designated ''wordprocessing program,'' rather than specifically ''WordPerfect 5.1,'' because the Commission may decide to utilize different software in the future. We also decline to adopt CBT's proposal to permit parties to submit documents in alternative wordprocessing formats. Because of conversion difficulties, parties will not be permitted to submit documents in any wordprocessing format not used by the Commission. The staff has discretion to grant waivers of this requirement to parties upon a showing that such wordprocessing program is unavailable to them.

4. Amendments To Complaints. a. The *NPRM.* 241. We stated in the *NPRM* that compliance with deadlines in the Act requires that a complaint be fully developed prior to filing. In furtherance of this goal, we proposed to prohibit the amendment of complaints except for changes necessary under 47 CFR 1.720(g), which requires that information and supporting authority be current and updated as necessary in a timely manner. This would preclude a complainant from introducing new issues late in the development of the case.

b. Comments. 242. BellSouth, PTG, and SWBT support prohibiting amendments to complaints because such a bar will encourage compliance with the proposed pre-filing requirements and result in a fully developed complaint that conforms to format and content requirements. Several commenters, however, oppose the prohibition. ACTA, GTE, ICG, MCI, and TRA suggest allowing complaints to be amended for good cause, *e.g.* if the complainant could not have reasonably ascertained certain facts at the time of filing of the complaint. MCI expresses concern that such a prohibition might reward monopoly carriers who withhold information. CBT and PTG suggest that any amended complaint be treated as a new complaint to restart the statutory resolution deadline.

c. Discussion. 243. The Act requires expedited resolution of certain complaints. An amendment to a complaint subject to a statutory deadline on a showing of good cause would require the resolution of that claim in a shorter period than provided for in the statutory deadline. We believe that the cost of expediting complaint resolutions more than Congress anticipated would outweigh any benefit to be had from allowing such amendments. Further, we are not persuaded by the arguments of ACTA, GTE, ICG, TRA, and MCI that prohibiting amendments to complaints will unduly prejudice complainants to the benefit of defendants. We also decline to adopt the suggestion of CBT and PTG that, instead of prohibiting amendments to complaints, we treat amended complaints as new complaints and restart any statutory deadline on the date of the ''new complaint.'' We are not persuaded that our ''treatment'' of an amended complaint as a new complaint would comply with the statutory deadline requirements. We note that a complainant is not prohibited from filing a separate formal complaint if it discovers a new claim at some later point in the complaint process. In addition, where appropriate, the staff may consolidate two or more complaints to adjudicate all claims arising out of the same transaction or occurrence in one proceeding. Thus, we adopt a rule generally prohibiting all amendments to complaints. We note that this prohibition on amendments in no way relieves the parties of their obligation under § 1.720(g) of the Commission's rules to maintain the accuracy and completeness of all information and supporting authority furnished to the Commission in a pending proceeding. In addition, we note that complainants always have the option of filing their complaints in federal court if they conclude that the Commission's rules will not afford them the pleading opportunities they need. The Commission's rules have long included a fact pleading requirement designed to ensure that a party has sufficient knowledge of its claims before filing its complaint.

5. Additional Suggestions From Commenters. a. The *NPRM.* 244. In the *NPRM*, we sought alternative proposals to modify the rules regarding motions.

b. Comments. 245. BellSouth suggests that any request for an interlocutory ruling be deemed a voluntary waiver of any applicable statutory deadline shorter than five months. BellSouth reasons that, given the Commission's limited resources, such a rule is the only way to discourage the filing of time-consuming motions that will preclude Commission staff from meeting the statutory deadlines.

246. AT&T and ICG suggest requiring parties to give advance notice of motions to be filed.

247. PTG suggests that the Commission make a commitment to decide all motions within thirty days of filing, rather than waiting until the final order is issued.

c. Discussion. 248. We decline to adopt BellSouth's suggestion that a request for an interlocutory ruling be deemed a waiver of the applicability of any statutory deadline shorter than five months. As discussed in the ''Damages'' section, the parties to a formal complaint proceeding do not have the authority to waive statutory deadlines, with the exception of the section 271(d)(6)(B) ninety-day deadline. Even if the parties did have such authority, a rule that allowed a party to waive a statutory deadline by filing any type of interlocutory motion would provide a means for such party to manipulate the deadline and, thereby, eviscerate the intent of the Act to provide expedited resolution for certain complaints.

249. We decline to adopt a rule requiring parties to provide notice of their intent to file a motion because we find that such a requirement would not further the timely resolution of motions. We do require parties to certify in any motions to compel discovery that good faith efforts to resolve the discovery dispute were undertaken prior to the filing of the motion. That rule will provide early notice of a party's intent to file such a motion. Other types of motions do not slow down formal complaint proceedings significantly because, unlike discovery disputes, they generally do not need to be resolved to enable parties to support their claims in briefs. Furthermore, the delivery of all motions will be expedited by our requirement that parties serve all motions by hand delivery, overnight delivery, or facsimile transmission followed by mail delivery.

250. We decline to adopt a rule requiring the Commission to rule on all motions within thirty days. The intent of this rulemaking is to speed up resolution of formal complaints and, to the extent the early disposition of a pending motion would further such intent, the Commission will rule on motions as expeditiously as possible. We do not, however, see the benefit of constraining Commission staff by imposing a requirement that all motions be resolved within thirty days.

N. Confidential or Proprietary Information and Materials

251. In 1993, the Commission revised its rules to require a party asserting the confidentiality of any materials subject to a discovery request to mark clearly the relevant portions as being proprietary information. If the proprietary designation is challenged, that party bears the burden of demonstrating, by a preponderance of

the evidence, that the material falls under the standards for nondisclosure enunciated in the Freedom of Information Act (''FOIA'').

a. The *NPRM.* 252. Because the format and content proposals may require parties to exchange information and materials with their initial pleadings, the Commission proposed to allow parties to designate as confidential or proprietary any materials generated in the course of a formal complaint, and not limit such designation to materials produced in response to discovery requests. We sought comment on this proposal as well as on whether additional procedures were needed in light of the shortened complaint resolution deadlines in the Act and our proposals in the *NPRM* to eliminate certain pleading and discovery opportunities.

b. Comments. 253. All of the parties who commented agree that the proposal will encourage parties to exchange information without fear of public dissemination. While it supports the Commission's goals, ACTA notes that the potential for abuse exists because parties may excessively and unnecessarily label documents and information as confidential or proprietary. MCI requests that the Commission clarify that information considered confidential due to its proprietary, sensitive or competitive nature cannot be withheld from production on that ground.

c. Discussion. 254. We conclude that parties shall be allowed to designate as confidential or proprietary any materials generated in the course of a formal complaint proceeding. The commenters support imposing this requirement. We find that, because all parties may have information that is both relevant to a dispute and competitively sensitive, parties must be assured of protection for their confidential or proprietary information if we want to avoid the time consuming process of resolving disputes over the treatment of documents and information sought to be exchanged, regardless of whether the information is produced in response to discovery requests or not. We disagree with ACTA's contention that this requirement might be more subject to abuse than the prior requirement limiting confidential or proprietary designations to materials produced in response to discovery requests. We emphasize that designating information or materials as confidential or proprietary will not prevent the information or materials from being produced, therefore, parties will have little to gain by falsely claiming that materials are confidential or proprietary. Furthermore, if a proprietary designation is challenged, the party claiming confidentiality will continue to bear the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the FOIA's standards for nondisclosure.

255. The modification of the rule providing for designation of material disclosed in the course of a formal complaint proceedings is merely an extension of the previous rule, which allowed for the designation of materials that were disclosed in response to discovery as confidential and proprietary. In current practice, parties that reference facts in or attach materials to briefs that have been designated as confidential or proprietary serve two copies on opposing parties, a public copy that has had confidential materials redacted and is clearly marked ''Public Copy'' and a confidential copy that contains the material that was redacted from the public copy and is clearly marked ''Confidential Copy.'' In addition, the filing party files the public copy with the Office of the Secretary and files the confidential copy directly with the Commission staff attorney that is handling the matter. This practice will not change. In addition, where a complainant references facts in or attaches materials to its complaint that have been designated as confidential or proprietary, the procedure is substantially the same. A confidential copy of the complaint must be filed under seal directly with the Branch Chief on which it is required to serve two copies of the complaint.

O. Other Required Submissions

1. Joint Statement of Stipulated Facts. a. The *NPRM.* 256. The *NPRM* proposed to require parties to submit a joint statement of stipulated facts and key legal issues five days after the answer is filed. We noted that the ''rocket docket'' rules in the United States District Court for the Eastern District of Virginia require parties to submit written stipulations of all uncontested facts prior to trial. We stated our belief that requiring the parties to submit a joint statement of stipulated facts and key legal issues at this stage might promote agreement on a significant number of the disputed facts and legal issues, as well as help the Commission to determine whether or to what extent discovery is necessary.

b. Comments. 257. Most parties support this proposal. Many commenters, however, suggest that the joint statement be submitted later in the process to give parties more time to meet and negotiate. U S West additionally suggests requiring a joint statement of facts in dispute. Bechtel & Cole suggest requiring a joint statement that includes an outline of factual claims and legal arguments, and BellSouth suggests permitting parties to file unilateral statements if the parties cannot reach agreement in time. PTG opposes requiring a filing of a joint statement of facts because it believes that parties would never stipulate to facts. CompTel also opposes the proposal, arguing that nothing will be gained because parties will maintain the same positions taken in their fact-based complaints or answers.

c. Discussion. 258. We conclude that parties shall be required to submit a joint statement of stipulated facts and key legal issues. We find that the drafting of such a statement, including the discussions between the parties that are necessary to the drafting of such a document, will promote settlement among the parties or, at the very least, narrow the factual and legal issues the Commission will need to resolve. The joint statement will further assist the Commission in discerning exactly what the parties believe to be the most important issues. We disagree with PTG's argument that the proposal should be rejected because parties will be unable to stipulate to any facts. We find it highly improbable that parties will be unable to stipulate to any facts whatsoever. We further conclude, after consideration of U S West's proposal, that parties shall be required to file a joint statement of disputed facts because such a document will pinpoint the exact facts in dispute. Thus, even where parties are unable to agree on a single fact, that can be made clear to the staff through the joint statement because it will include disputed facts. A clear and unequivocal identification of the issues on which the parties cannot agree will be especially beneficial to Commission staff when it is resolving the need for requested discovery at an initial status conference. We also disagree with CompTel's argument that parties will simply maintain the same positions taken in their complaints and answers. We find that compelling parties to meet after submission of the complaint, answer, and any necessary reply will encourage parties to negotiate their positions, resulting in agreement on some issues and, at a minimum, clarification of the areas in which they disagree. Indeed, we have occasionally required parties to submit stipulations of fact in past complaints, and have found that the parties often are able to reduce significantly the legal and factual issues in dispute.

259. Because several commenters expressed concerns about the timing of the joint statement of stipulated facts, disputed facts and key legal issues, we have extended the time for the filing of the statement. Such joint statement shall be submitted to the Commission by no later than two business days prior to the initial status conference. We conclude that it would provide less of a benefit to the complaint proceeding if we extended the filing date of the joint statement any further. We have timed the filing of the joint statement to coincide with our requirements for interrogatory requests and the ''meet and confer'' conference that must take place prior to the initial status conference. We find that it is important to require the parties to discuss the factual and legal issues at this particular stage. Parties will have just reviewed the opposing parties' initial pleadings, documentation, and interrogatories but will not yet have participated in the more formal initial status conference. Compelling parties to disclose their positions on all issues in an informal manner, prior to the initial status conference, may be more productive in terms of settling or narrowing the issues than if the same discussion took place after the initial status conference. The parties may feel obliged to take firm positions on the issues in dispute after the initial status conference has occurred. Furthermore, we emphasize that the staff has discretion to grant additional time to submit the joint statement where necessary or appropriate.

260. We reject BellSouth's suggestion to allow the filing of unilateral statements. The joint statement is beneficial in large part because it is a single document and does not require the Commission to compare two documents to determine on which facts, each articulated slightly differently in the separate documents, the parties agree and disagree. The other significant benefit arises from requiring the parties to meet and discuss all relevant facts and fully articulate their disagreements. Neither of these benefits would be obtained by allowing the parties to file unilateral documents, which would most likely be highly repetitive of the facts laid out in the complaint, answer and any necessary reply. Although Bechtel & Cole suggests that the joint statement include an outline of factual claims and legal arguments, we conclude that the requirement we adopt here effectively encompasses this suggestion.

2. Briefs. a. The *NPRM*. 261. The *NPRM* sought comment on changes to our current briefing process. First, we sought comment on prohibiting the filing of briefs in cases in which discovery is not conducted and requiring parties to include proposed findings of fact, conclusions of law and legal analysis with their complaints and answers. We sought comment on whether parties could reasonably prepare proposed findings of fact, conclusions of law and legal analysis before reviewing the responses to their pleadings and statements of stipulated facts. Second, we sought comment on continuing to allow parties to file briefs, but permitting the Commission staff to limit the scope of such briefs. This option would add some delay to the process but would enable the parties to review both sides of the case before briefing their legal arguments to the Commission.

262. We also sought comment on whether the staff should be permitted to set the timetable for completion of any briefs to give the staff maximum flexibility and control in order to meet the various statutory resolution deadlines. We also asked parties to identify reasonable timetables for completion of such briefs. The *NPRM* proposed to limit initial briefs to twenty-five pages and reply briefs to ten pages in all cases.

b. Comments. 263. Bell Atlantic and NYNEX support the proposal to prohibit briefs in cases in which discovery is not conducted. Bell Atlantic argues that under the pre-filing procedures, parties will have sufficient notice of the nature and basis of the complaint to argue the legal issues fully in the complaint and answer. NYNEX states that, if the Commission adopts its proposals to require the complainant to include all of the legal and factual support in the initial filing, subsequent briefs would be superfluous. Both Bell Atlantic and NYNEX agree that, while briefs will probably be unnecessary in most cases in which discovery is not conducted, parties should be able to ask, at the initial status conference, for permission to file briefs on certain narrowly-tailored issues. Most of the commenters feel that parties must be allowed to file briefs because parties may lack the requisite information to file findings of fact and conclusions of law in their complaints and answers. For example, GST, MCI, PTG, Sprint, and U S West argue that parties cannot be expected to submit findings of fact, conclusions of law, and legal analysis prior to reviewing their opponents' pleadings. AT&T argues that briefs are necessary to complete the record.

264. AT&T, Bell Atlantic, GST, KMC, MFS, GTE, MCI, and SWBT support the proposal to allow the staff to limit the scope of briefs. GTE states that permitting parties to file briefs but limiting the subjects of those briefs will expedite the complaint process while allowing each party to establish a complete record. MCI argues that the initial status conference will enable the Commission to tailor the briefing process to fit the needs of each individual case. ACTA, ICG, and PTG, however, oppose permitting staff to limit the scope of briefs, arguing that parties must be permitted to argue their cases as they see fit and on the issues they deem relevant. CBT supports allowing the staff to limit the scope of briefs to disputed issues only, but argues that imposing any further limitations might prejudge the outcome of the case.

265. The commenters support the proposal to reduce the time in which briefs must be filed. Several parties suggested specific timetables, while others were comfortable with allowing the Commission to set the timetable at the initial status conference.

266. Most commenters support the proposal to reduce brief page limits to twenty-five pages for initial briefs and ten pages for reply briefs. Several commenters, such as AT&T and PTG, request that the staff be able to set flexible page limits or that the parties be permitted to file for leave to file longer briefs. ACTA, ICG, and the cable entities argue that a twenty-five page limit is insufficient.

c. Discussion. 267. The format and content rules adopted in this proceeding require that complaints, answers, and any necessary replies contain complete legal analysis, full documentary support, and proposed findings of fact, conclusions of law at the time of filing. It has been our experience that parties have used the briefing opportunity to file documents that merely restate the arguments already contained in the complaint, answer, and reply in cases in which discovery is not conducted. In those cases where discovery is conducted and new material facts are introduced into the case as a result of such discovery, briefs are necessary to provide the parties the opportunity to revise or further support their existing analysis in light of the new information disclosed. Eliminating briefs where discovery is not conducted, however, will avoid wasting the Commission's resources reviewing documents that are of little utility, as well as provide parties with incentive to submit complete and fully documented complaints, answers, and replies initially. Thus, we conclude that parties shall be generally prohibited from filing briefs in cases in which no discovery is conducted. The commenters who oppose this proposal are concerned that parties might lack the information necessary to file findings of fact and conclusions of law in their complaints and answers, or that briefs are needed to complete the record. As noted by Bell Atlantic and NYNEX, however, under the new pre-filing activities and format and content requirements, complainants and defendants alike should have sufficient information with which to prepare and file proposed findings of fact and conclusions of law in their complaints, answers, and necessary replies. We emphasize that this rule is not a complete prohibition on the filing briefs in cases in which discovery is not conducted. The Commission may request briefs where briefing would be helpful or is necessary. Further, where a party believes that briefing is essential to fully present its case, it may request such briefing and explain to the Commission why briefing is necessary in that particular case. We note that parties may still file briefs as a matter of right in cases in which discovery is conducted.

268. In those cases in which briefs are permitted, each party is required to attach all documents upon which it intends to rely to its briefs. Parties are permitted to attach to their briefs documents that were previously identified, and affidavits of persons previously identified, in their information designations, along with a full explanation in the brief of the material's relevance to the issues and matters in dispute. Such materials need not have been attached to the complaint, answer, or necessary reply.

269. In those cases in which briefs are permitted, such briefs are required to include all legal and factual claims and defenses previously set forth in the complaint, answer or any other prior pleading submitted in the proceeding that the parties wish the Commission to consider in rendering its decision. Claims and defenses previously made but not reflected in the briefs shall be deemed abandoned. Where, however, the staff limits the scope of the briefs in a manner that does not permit parties to include claims previously raised, the failure to include claims previously raised will not be deemed to be an abandonment of such claims. Although the *NPRM* did not specifically propose to require briefs to include all claims previously set forth in the proceeding, we find that this requirement will maximize the utility of briefs. Authorized briefs are a means to facilitate the staff's ability to identify readily all legal and factual claims and defenses made by the parties, along with full citations to the law and the evidentiary record. This requirement should minimize the need for the staff to sift through multiple pleadings submitted by the parties in an effort to identify and address each of their respective claims. In addition, this requirement will prevent staff from having to rule on claims of questionable merit that were identified in initial pleadings, but that the parties do not intend to support or rely on in their briefs.

270. The Commission may limit the scope of any authorized briefs where appropriate, and set timetables for the filing of such briefs. Most of the commenters support these requirements, because they understand that the Commission needs such limitations and flexibility to accomplish its goal of meeting the statutory deadlines provided for in the Act and expediting the processing of all formal complaints. ACTA, CBT, ICG, and PTG argue that the staff should not limit the scope of briefs because parties should be permitted to brief the issues that the parties themselves deem relevant. These commenters ignore, however, that parties are given the opportunity to file proposed findings of fact and conclusions of law and a complete legal analysis on the issues they deem relevant with their complaint, answer and any necessary reply. To the extent that discovery discloses new material facts, briefs are allowed as a matter of right. The parties also have several opportunities to explain to the staff why particular issues should be briefed. The staff's decision regarding the scope and timing of briefs will be based on the content of the parties' initial pleadings and their joint statement, as well as on information garnered from discussions with the parties at the initial status conference and any other status conferences held. Through these vehicles, parties have an opportunity to identify issues they feel should be briefed and to explain any special circumstances that may warrant a shorter or longer filing time for briefs. Limiting the scope of briefs, when appropriate, will help avoid unnecessary or redundant pleadings that do not facilitate the decision-making process. The Commission's discretion to set timetables on a case-by-case basis for the completion of briefs will help to tailor schedules to the needs of individual complaints.

271. The page limits for allowed briefs shall be twenty-five pages for initial briefs and ten pages for reply briefs. The statutory deadlines imposed by the Act place great burdens on the Commission to evaluate briefs and prepare recommended decisions within short timeframes. We find that reducing the page limits for initial briefs and reply briefs to twenty-five and ten pages, respectively, should yield more focused and concise legal and factual arguments, as well as discourage the filing of briefs containing unnecessary and redundant information. We adopt the suggestion of several commenters to permit parties to request leave to file longer briefs. This provision should alleviate the concern of certain commenters that the page limits may be insufficient in some cases. Parties shall be granted waivers of these page limits for good cause shown.

3. Commenters' Additional Suggestions. a. The *NPRM.* 272. The *NPRM* asked commenters to identify alternative procedures that would facilitate the preparation and submission of clear and concise briefs within the time constraints imposed by the Act.

b. Comments. 273. AT&T, ICG, MCI, SWBT, and U S West suggest that the briefing process should mirror that used in federal district court, in which the complainant files a single initial brief, followed by the defendant's opposition brief, followed by the complainant's reply brief. They argue that simultaneous briefing forces a defendant to reply to a position not yet articulated, and does not give a complainant an opportunity to reply to a defendant's reply brief, while sequential briefing permits parties to meet each other's arguments directly.

c. Discussion. 274. We decline to adopt the suggestions of AT&T, ICG, MCI, SWBT, and U S West to require a sequential briefing process. Sequential briefing consists of three stages: the complainant's initial brief, the defendant's opposition brief, and the complainant's reply brief. Each party must be provided with sufficient time to respond to the brief filed in the preceding stage. We conclude that simultaneous briefing, which can be accomplished in two stages (initial brief and reply brief) is more appropriate in light of the time constraints imposed by the Act. While sequential briefing is appropriate in a notice-pleading context, in which the parties may lack information regarding the positions of opposing parties, the benefits to be gained by sequential briefing under the Commission's fact-pleading rules are minimal. Under the requirements imposed in this proceeding, parties must submit fact-pleadings and a joint statement of disputed and undisputed facts and key legal issues, as well as attend an early status conference, where the scope of the briefing will be discussed and may be limited. We find that these requirements will ensure that parties are fully aware of their opponents' positions on all key factual and legal issues by the briefing stage. Simultaneous briefing should not result in parties being prejudiced in any way.

P. Sanctions

275. The *NPRM* proposed rules that will place greater burdens on complainants and defendants to be more diligent when presenting or defending against allegations of misconduct in violation of the Act or the Commission's rules. Such diligence must be enforced in order to meet the complaint resolution deadlines contained in the Act and attain the goal of generally improving the formal complaint process.

a. The NPRM. 276. In the *NPRM,* we outlined the need for sanctions which would provide sufficient incentives to ensure compliance with the new rules. We asked interested parties to provide us with their proposals for appropriate sanctions. We provided several examples of specific sanctions for certain anticipated rules violations, including: (1) summary dismissal of a complaint for a complainant's failure to satisfy format and content requirements; (2) summary ruling or other judgment in favor of the complainant for a defendant's failure to respond fully and with specificity to a complainant's allegations; and (3) the imposition of monetary fines under the Act's forfeiture provisions for failure to file pleadings in accordance with our rules. We asked parties to comment on these and other alternatives that might help to ensure full compliance with the expedited complaint procedures proposed in the *NPRM.*

b. Comments. 277. Most of the parties who commented generally support the proposed sanctions. Most state that failure to satisfy the form and content requirements should result in summary dismissal of the complaint without prejudice. GST, GTE, KMC, MFS and SWBT argue that, in most cases, the imposition of monetary forfeitures would be preferable to summary grant or dismissal, which they contend should be used only for: (1) failure by complainants to set forth allegations with specificity; (2) failure by defendants to respond to the complaint; or (3) failure by either party to certify that they engaged in good faith settlement attempts. CBT, GST, KMC, and MFS suggest issuing a notice of deficiency or show cause order prior to imposing a sanction. MCI suggests that a defendant should be penalized for its failure to cooperate in the pre-filing stages of a complaint proceeding by permitting the complainant to file a complaint without sufficient facts or documentation. MCI also suggests that a complainant should be penalized for its failure to cooperate in the pre-filing stages by permitting general denials where the defendant lacks necessary information. U S West argues that, because parties seldom violate the Commission's rules, the Commission should make quick and decisive rulings in discovery conflicts rather than emphasize sanctions. Communications Venture Services, Inc. (''CVS'') and SWBT suggest imposing sanctions on attorneys as well as clients. ACTA states that the Commission should draw an adverse inference as to material facts to sanction discovery abuses or failure to comply with discovery rulings.

c. Discussion. 278. We conclude that no rule modifications are necessary with regard to sanctions at this time. We have at our disposal a wide range of sanctions to address violations or abuses of our formal complaint rules, including summary grant or dismissal of a complaint (in whole or in part), the drawing of adverse inferences as to material facts, monetary forfeitures, admonishment rulings, and show cause proceedings. Because sanctionable behavior may entail a wide range of conduct by complainants and defendant carriers, the Commission has considerable discretion to tailor sanctions to the individual circumstances of a particular violation. Sanctions for a failure to meet pleading requirements should be directed at the nature of the failure. For example, a complainant that fails to properly support a statement of material fact may have such statement treated as an unproven assertion. Sanctions for discovery abuses should provide sufficient incentives for parties to view full and early disclosure as preferable to any potential benefits from dilatory tactics.

Q. Other Matters

279. The *NPRM* sought comment on the meaning of the term ''act on'' in section 271(d)(6)(B) of the Act pertaining to complaints concerning failures by BOCs to meet conditions required for approval to provide in-region interLATA services. In addition, the Commission stated in the *Sections 260, 274, 275 First Report and Order* and the *Sections 260, 274, 275 Second Report and Order* that certain issues concerning possible evidentiary standards for complaints alleging violations of sections 260, 274, and 275 would be addressed in the Formal Complaints rulemaking proceeding.

a. Section 271. i. The *NPRM.* 280. Section 271(d)(6)(B) of the Act provides that the Commission shall ''act on'' complaints alleging certain violations of the section within ninety days of the date filed, unless otherwise agreed to by the parties. This is in contrast to other complaint provisions added by the 1996 Act which mandate ''final'' action by the Commission within prescribed time periods. We tentatively concluded in the *NPRM* that ''act on'' as used in section 271(d)(6)(B) may be satisfied, where appropriate, by a determination of the Common Carrier Bureau whether a BOC has ceased to meet the conditions required for approval to provide in-region interLATA services, and need not require final action by the full Commission. We sought comment on this tentative conclusion and on the appropriate procedure or mechanism for early notice to the Commission of the parties' agreement to extend or waive the ninety-day resolution deadline.

ii. Comments. 281. Commenters disagree on the meaning of ''act on'' in section 271(d)(6)(B). BellSouth, CompTel, GST, KMC, MFS, and MCI state that a Common Carrier Bureau decision constitutes ''acting on'' within the meaning of section 271(d)(6)(B) because the abbreviated deadline for resolution is a statutory mandate for prompt relief, which would not be fulfilled by waiting for a decision by the entire Commission. In addition, MCI argues that a Common Carrier Bureau decision is sufficient because the right to decide cases under section 271(d)(6)(B) is not specifically reserved to the Commission under § 0.291 of the Commission's rules. CVS, NYNEX, ICG, PTG, and SWBT, however, argue that section 271(d)(6)(B) requires a Commission decision because it would be contrary to Congressional intent to deny parties the immediate right of judicial review. PTG argues that the Commission must decide section 271(d)(6)(B) cases because, under § 0.291, the Commission has not delegated its authority to designate for hearing any formal complaints which present ''novel questions of fact, law or policy[,]'' nor to ''impose, reduce, or cancel forfeitures pursuant to Section 203 or Section 503(b) * * * in amounts of more than $80,000.''

282. Regarding the notification of waiver of the section 271(d)(6)(B) ninety-day deadline, BellSouth suggests that the complainant be required to indicate its willingness to waive the ninety-day resolution deadline in the formal complaint intake form proposed by the Commission to aid in the preparation and filing of formal complaints. GST, KMC, and MFS

suggest that such agreement take place during ''meet and confer'' conferences, which would occur prior to the initial status conferences pursuant to other proposals in the *NPRM.*

iii. Discussion. 283. Notwithstanding our tentative conclusion in the *NPRM* that a decision by the Common Carrier Bureau on the merits of the complaint satisfies the ''act on'' requirement in section 271(d)(6)(B), we conclude that we need not address this issue in this Report and Order. We recognize the importance that Congress assigned to the resolution of complaints alleging violations of the competitive checklist requirements as reflected in the ninety-day ''act on'' requirement. We fully intend to act promptly on all matters pertaining to those requirements to assure that full effect is given to the competitive goals underlying section 271 of the Act.

284. To facilitate our handling of section 271(d)(6)(B) complaints, we adopt a rule requiring parties to indicate whether they are willing to waive the ninety-day deadline in their initial filings to the Commission or, at the very latest, by the date of the initial status conference. Parties will have the opportunity to reach an agreement about waiver of the section 271(d)(6)(B) ninety-day deadline during the pre-filing activities. A complainant should indicate whether or not it is willing to waive the ninety-day deadline in the formal complaint intake form accompanying the complaint. The defendant carrier will have opportunity to respond to the complainant's request for waiver either in its answer or at some earlier date. Parties will have an additional opportunity to discuss the waiver of the ninety-day deadline in their ''meet and confer'' held prior to the initial status conference. Because meeting a resolution deadline of ninety days will require both strong commitment and meticulous preparation at the very start of the complaint process, from the parties and from the Commission, a request by the parties to waive the ninety-day deadline will be not considered after the initial status conference. Permitting parties to waive the ninety-day deadline at any point in the complaint process could result in the wasteful expenditure of time and resources by the staff and the parties. In addition, we note that even if the parties agree to waive the ninety-day deadline in a section 271(d)(6)(B) case, it is our intent to resolve such cases as expeditiously as possible. Thus, parties should not relax their diligence in meeting our format and content requirements to the fullest extent possible as a consequence of having agreed to waive the ninety-day deadline.

b. Sections 260, 274 and 275 of the Act. 285. In the *Sections 260, 274, 275 First Report and Order,* 62 FR 7690 (February 20, 1997), and the *Sections 260, 274, 275 Second Report and Order,* 62 FR 16093 (April 4, 1997), we deferred to the Formal Complaints rulemaking the issue of what specific acts or omissions might be sufficient to state a *prima facie* claim for relief under sections 260, 274, and 275. In that same proceeding, we noted that the complainant has the burden of establishing that a carrier has violated the Act or a Commission rule or order and that burden generally does not shift at any time to the defendant carrier. We also deferred to the Formal Complaints rulemaking the issue of whether shifting the burden of proof from the complainant to the defendant in complaints alleging violations of sections 260, 274, and 275 would advance the pro-competitive goals of the Act.

i. *Prima facie* Claim. (a). The *Sections 260, 274, 275 NPRM.* 286. In the *Sections 260, 274, 275 NPRM*, 61 FR 39385 (July 29, 1996), we asked parties to comment on what *prima facie* showing should be required of a complainant who alleges that an incumbent LEC has violated sections 260 or 275, or that a BOC has violated section 274. Commenters were asked to describe what specific acts or omissions would constitute a *prima facie* claim for relief under those sections of the Act.

(b). Comments. 287. Commenters did not address in this rulemaking the issue of what acts or omissions might constitute a *prima facie* claim in complaints alleging violation of sections 260, 274, and 275. In response to the *Sections 260, 274, 275 NPRM*, however, many parties commented on this issue. Several commenters contend that the same standard for a *prima facie* case should apply to all complaints, including complaints alleging violations of sections 260, 274, or 275; that is, a complainant would establish a *prima facie* case by alleging facts that, if true, would constitute a violation of the Act. Several parties, however, suggest specific standards for stating a *prima facie* claim for relief under sections 260, 274, and 275. ATSI states that a complainant alleging a violation of section 260 should be allowed to establish a *prima facie* case by any showing of denied or delayed access, or any showing of cost or quality differentials between the incumbent's own telemessaging operations and those offered by the complainant. ATSI further suggests that the Commission establish certain safeguards to prevent anti-competitive conduct, and declare that facts demonstrating a violation of these safeguards should be sufficient to state a *prima facie* case of unlawfulness. According to ATSI, because section 260 was not intended to ''mimic a legal proceeding'' complainants should not have to undertake costly or time-consuming preparatory work prior to filing a complaint.

288. A number of commenters oppose ATSI's proposals. U S West argues that a section 260 complaint is a legal proceeding in which both the complainant's and defendant's rights should be respected. BellSouth maintains that a *prima facie* case should include specific allegations of fact showing that a defendant carrier has engaged in prohibited discrimination or cross-subsidization. A number of other commenters argue that ATSI's proposals, if adopted, would open the floodgates for unsubstantiated complaints against the incumbent LECs and their affiliates.

289. NYNEX states that, in order to establish a *prima facie* case pursuant to section 274, the complaint would have to contain a description of the complainant and its interest; be sworn and notarized and state with particularity the facts on which the complaint is based, distinguishing between facts based on personal knowledge and facts based on information and belief; provide a verifiable source of statements based on information and belief; be accompanied by supporting documentation; and identify materials the complainant has been unable to obtain after due inquiry which it asserts are in the possession of the BOC or its separate affiliate.

(c). Discussion. 290. We decline to adopt a rule prescribing specific acts or omissions that would be *prima facie* unlawful under sections 260, 274, and 275. Instead, we will review section 260, 274, or 275 complaints on a case-by-case basis to resolve compliance issues. We believe that, beyond the specific requirements of the Act and the Commission's implementing rules and orders, it would be impracticable to attempt to delineate specific acts or omissions that would constitute violations of sections 260, 274 and 275. Acts or omissions that might raise the specter of violations under sections 260, 274 and 275 are likely to vary widely. Moreover, it is possible that a particular act or omission deemed unlawful in one context may be perfectly reasonable in another. Therefore we will continue our existing practice of requiring that, in the context of a section 208 complaint proceeding, a *prima facie* showing must include allegations of fact, which if true, would establish that a BOC has violated the Act or any implementing rule or order.

ii. Shifting the Burden of Proof to Defendant Carriers in Complaints Alleging Violations of Sections 260, 274 and 275 of the Act. (a). *The Section 260, 274, 275 NPRM*. 291. In the *Sections 260, 274, 275 NPRM*, we noted that in a formal complaint proceeding the complainant generally has the burden of establishing, by a preponderance of the evidence, that a common carrier has violated the Act or a Commission rule or order. Ordinarily, this burden of proof does not, at any time in the proceeding, shift to the defendant carrier. We sought comment in the *Sections 260, 274, 275 NPRM* on whether, for purposes of complaints arising under Sections 260, 274, 275, shifting the ultimate burden of proof from the complainant to the defendant would advance the pro-competitive goals of the Act.

(b). Comments. 292. Commenters did not address in this rulemaking the issue of shifting the burden of proof from the complainant to the defendant BOC or incumbent LEC in complaints alleging violations of Sections 260, 274, and 275. A number of parties, however, commented on this issue in response to the *Sections 260, 274, 275 NPRM*. The BOCs oppose shifting the burden of proof to the defendant carrier after a complainant establishes a *prima facie* case, arguing that such a practice would force defendants to prove a negative; *e.g.*, lack of undue delay, unavailability of requested services, or technical impossibility. The BOCs assert that the Administrative Procedures Act (''APA'') requires that the burden of persuasion in complaint cases remain on the complainant throughout and that shifting the burden of proof in the manner proposed would encourage the filing of frivolous complaints. SWBT and U S West object to shifting the burden of proof in section 274 cases, claiming that, because section 274 has no statutory resolution deadline and complainants have the option of filing their claims in federal district court, burden shifting would promote ''forum shopping'' by parties wishing to litigate their claims before the Commission under more relaxed standards. In addition, U S West argues that shifting the burden in section 274 cases would be particularly inappropriate because section 274 involves First Amendment (private and commercial speech) issues. BellSouth and PTG state that a defendant would bear the burden of producing evidence only if it asserted an affirmative defense, such as the reasonableness of its actions. Ameritech and PTG concede that, at most, a defendant might be expected to bear the burden of production, but not of persuasion. NYNEX proposes that, rather than shifting the burden of proof to a defendant after a complainant has established a *prima facie* case, a defendant should be required to provide: (1) a sworn and notarized response containing an admission or denial of all allegations in the complaint; (2) a summary of the facts on which the response is based, distinguishing between facts based on personal knowledge and facts based on information and belief; (3) a verifiable source of statements based on information and belief; (4) its defenses; and (5) supporting documentation if available or if it can be reasonably acquired within the time allowed for response.

293. ATSI, AT&T, AICC, MCI, and Voice-Tel all support shifting the burden of proof to defendants once the complainant has established a *prima facie* case. These commenters maintain that burden shifting is appropriate in section 260, 274 and 275 cases because of short resolution deadlines and the fact that the relevant information will generally be in the possession or control of the defendant BOC or incumbent LEC. AICC states that the BOCs' argument that the APA prohibits shifting the burden of proof to a defendant is inapplicable to section 275, because the applicable section of the APA, section 556, only pertains to certain hearings and rulemakings required by sections 553 and 554, respectively, of the APA. AICC adds that the Commission should follow its tentative conclusion in the *BOC In-Region NPRM*, 61 FR 39397 (July 29, 1996), and not adopt a presumption of reasonableness favoring an incumbent LEC or its alarm monitoring affiliate when reviewing complaints alleging violations of section 275.

(c). Discussion. 294. We decline to adopt a rule that would shift the burden of proof to defendant BOCs or incumbent LECs in expedited complaint proceedings pursuant to sections 260, 274 and 275 of the Act. We do not agree with the arguments of many commenters that shifting the burden of proof in such cases is necessary to advance the pro-competitive goals of the 1996 Act. Nor do we agree that a rule is required to formally shift the burden of production to a defendant carrier after a complainant has demonstrated a *prima facie* case of a violation of section 260, 274, or 275. The rules adopted in this proceeding, particularly those pertaining to pre-filing activities and the form and content of pleadings, are designed specifically to require both complainants and defendants to exercise diligence in presenting and defending against alleged violations of sections 260, 274 and 275, as well as other sections of the Act. The new rules require full identification of relevant documents and information in the possession, or within the control, of both the complainant and defendant carrier, along with prompt production or exchange of the information the parties intend to rely on in presenting and defending against claims of unlawfulness under provisions of the Act and the Commission's rules and orders.

295. In addition, the staff retains in all cases the discretion to effectively shift the burden of production in particular cases by directing defendant carriers to produce relevant information deemed to be within their exclusive possession or control. We note that this discretion is conferred under section 208 of the Act which authorizes the Commission to investigate complaints ''by such means and in such manner as it shall deem proper.'' Moreover, even in the absence of such action by the staff, it will be incumbent upon a defendant carrier to respond fully to any *prima facie* showing made by a complainant, with full legal and evidentiary support. A defendant that fails to provide such a response runs the risk of an adverse ruling or an adverse inference on a material fact.

296. We note that our decision not to adopt a rule to formally shift the burden of production to a defendant carrier after a complainant has demonstrated a *prima facie* violation of section 260, 274, or 275 is in contrast to our decision regarding section 271(d)(6)(B) complaints in the *BOC In-Region Order*, 62 FR 2927 (January 21, 1997). There, we concluded that the burden of production with respect to an issue will shift to the defendant BOC after a complainant has made a *prima facie* showing that the BOC has ceased to meet the conditions for its approval to provide interLATA services under section 271(d)(3). The specificity and nature of the competitive checklist requirements that would form the basis of a section 271(d)(6)(B) complaint justify a rule requiring a defendant BOC to come forward with evidence of continued compliance with section 271(d)(3). It would be difficult, however, to attempt to anticipate all of the various factual circumstances that could form the basis of section 260, 274, or 275 complaints. A rule that would automatically shift the burden of production in all cases would be

prejudicial or otherwise unreasonably burdensome on defendant carriers. As discussed in the preceding paragraph, the new rules give Commission staff ample authority to effectively shift the burden of production in cases where it is necessary to promote the full and fair resolution of the matters in dispute.

297. Finally, we conclude, as we did in our *BOC In-Region Order*, that we should not employ a presumption of reasonableness in favor of incumbent LECs in complaint actions under sections 260 and 275, regardless of whether the incumbent LEC is regulated as a dominant or non-dominant carrier. As we pointed out in the *BOC In-Region Order*, the ''presumption of lawfulness given to non-dominant carrier rates and practices is employed in the context of complaints alleging violations of sections 201(b) and 202(a) of the Act, where the complainant must demonstrate that the defendant's rates and practices are '' 'unjust and unreasonable.' '' Sections 260 and 275 contain unqualified prohibitions on discrimination by incumbent LECs and do not require considerations of reasonableness as is the case under sections 201(b) and 202(a).

IV. Conclusion

298. In this *Report and Order,* we amend our rules governing the filing of formal complaints to implement certain complaint provisions added or amended by the 1996 Act, as well as to facilitate the full and fair resolution of all complaints filed against common carriers before the Commission. These rules of practice and procedure will promote competition in all telecommunications markets by providing a forum for the prompt resolution of complaints of unreasonable, discriminatory, or otherwise unlawful conduct by telecommunications carriers.

V. Procedural Matters

A. Petitions for Reconsideration and *Ex Parte* Presentations

299. Parties must file any petitions for reconsideration of this *Report and Order* within thirty days from publication in the **Federal Register**. Parties may file oppositions to the petitions for reconsideration pursuant to § 1.106(g) of the rules.

300. To file a petition for reconsideration in this proceeding, parties must file an original and ten copies of all petitions and oppositions. Petitions and oppositions should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. If parties want each Commissioner to have a personal copy of their documents, an original plus fourteen copies must be filed. In addition, participants should submit two additional copies directly to the Common Carrier Bureau, Enforcement Division, Room 6008, 2025 M Street, N.W., Washington, D.C. 20554. The petitions and oppositions will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of the petition and any subsequently filed documents in this matter may be obtained from ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

301. Petitions for reconsideration must comply with § 1.429 and all other applicable sections of the Commission's rules. Petitions also must clearly identify the specific portion of this *Report and Order* for which relief is sought. If a portion of a party's arguments does not fall under a particular topic listed in the outline of this *Report and Order*, such arguments should be included in a clearly labelled section at the beginning or end of the filing.

B. Final Regulatory Flexibility Analysis

302. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers,* Notice of Proposed Rulemaking. The Commission sought written public comment on the *NPRM*, including comment on the IRFA. The comments received were not specific to the IRFA, but are discussed below to the extent they raise concerns or make suggestions relevant to this analysis. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

a. Need for and Objectives of the Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers, Report and Order, and the Rules Adopted Herein. 303. The Commission is issuing this *Report and Order* to implement certain complaint provisions added or amended by the 1996 Act and to improve generally the speed and effectiveness of our formal complaint process. The 1996 Act added and, in some cases, amended, key complaint provisions that, because of their resolution deadlines, necessitate substantial modification of our current rules and policies for processing formal complaints filed against common carriers pursuant to section 208 of the Act. Some of the requirements adopted in this *Report and Order* may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. Generally, amended rules will require or encourage complainants and defendants to engage in certain pre-filing activities, change service requirements, modify the form of initial pleadings, shorten filing deadlines, eliminate certain pleading opportunities that do not appear useful or necessary, and modify the discovery process.

b. Summary of Significant Issues raised by the Public Comments in Response to the IRFA. 304. In the IRFA, the Commission found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFA. However, as described below in Section 5, we have taken into account the comments submitted generally by small entities.

c. Description and Estimate of the Number of Small Entities to Which the Rules Adopted in the Report and Order in CC Docket No. 96–238 Will Apply. 305. The RFA generally defines small entity as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdictions.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA''). Moreover, the SBA has defined a small business for Standard Industrial Classification (''SIC'') categories 4812 (''Radiotelephone Communications'') and 4813 (''Telephone Communications, Except Radiotelephone'') to be small entities when they have no more than 1,500 employees. We first discuss the estimated number of potential complainants, which may include entities that are not telephone companies. Next we discuss generally the estimated number of potential defendants, which would be included in the total number of small telephone companies falling within the SBA's definitions of small business concerns and small businesses. Then, we discuss the number of small businesses within the SIC subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

306. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of ''small entity'' and ''small business concerns'' for the purpose of this FRFA. We do this because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, they are excluded from the definition of ''small entity'' and ''small business concerns.'' Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

i. Potential Complainants. 307. Section 208(a) provides that formal complaints against a common carrier may be filed by ''[a]ny person, any body politic or municipal organization.'' Beyond this definition, the FCC has no control or information regarding the filing frequency of complaints, nor identities of parties that will file complaints. The filing of complaints depends entirely upon the complainant's perception that it possesses a cause of action against a common carrier subject to the Act, as amended, and it is the complainant's decision to file its complaint with the FCC. Therefore we are unable at this time to estimate the number of future complainants that would qualify as small business concerns under SBA's definition.

308. As noted, the RFA includes ''small businesses,'' ''small organizations'' (non-profits), and ''small governmental jurisdictions.'' Nationwide, there are 4.44 million small business firms, according to SBA reporting data. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are 275,801 small organizations. Last, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were 85,006 such jurisdictions in the United States.

ii. Potential Defendants. 309. *Estimate of Potential Defendants that may be Classified as Small Businesses.* Section 208(a) provides for the filing of formal complaints for ''anything done or omitted to be done by any common carrier subject to this Act[.]'' The FCC has no control as to the filing frequency of complaints because such filing depends entirely upon the complainant's perception that it possesses a cause of action against a common carrier subject to the Communications Act of 1934, as amended, and it is the complainant's decision to file its complaint with the FCC. This inability to predict the number of future defendants necessitates conducting this FRFA based on the number of potential small business defendants, which is the number of common carriers that qualify as small business concerns under SBA's definition.

310. *Total Number of Telephone Companies Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that no more than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order. We estimate below the potential defendants affected by this order by service category.

311. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but twenty-six) were reported to have no more than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as ''small business concerns'' under the SBA's definition. Consequently, we estimate using this methodology that there are no more than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the actions taken in this *Report and Order.*

312. *Non-LEC wireline carriers.* We next estimate more precisely the number of non-LEC wireline carriers, including interexchange carriers (''IXCs''), competitive access providers (''CAPs''), Operator Service Providers (''OSPs''), Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to our most recent data: 130 companies reported that they are engaged in the provision of interexchange services; fifty-seven companies reported that they are engaged in the provision of competitive access services; twenty-five companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay

telephone services; and 260 companies reported that they are engaged in the resale of telephone services and thirty reported being ''other'' toll carriers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing *TRS Worksheets* are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as ''other,'' and some simply as IXCs. Consequently, we estimate that there are no more than 130 small entity IXCs; fifty-seven small entity CAPs; twenty-five small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and thirty ''other'' toll carriers that might be affected by the actions and rules adopted in this *Report and Order.*

313. *Local Exchange Carriers.* Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, we have two methodologies available to us for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed. Our alternative method for estimation utilizes the data that we collect annually in connection with the Telecommunications Relay Service (''TRS''). This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,347 small LECs (including small incumbent LECs) that may be affected by the actions taken in this Report and Order.

314. *Radiotelephone (Wireless) Carriers:* The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had no more than 1,000 employees. Thus, even if all of the remaining twelve companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, and, we are unable to estimate with greater precision the number of radiotelephone carriers and service providers that would both qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,164 small entity radiotelephone companies that might be affected by the actions and rules adopted in this *Report and Order.*

315. *Cellular and Mobile Service Carriers:* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 792 small entity Cellular Service Carriers and no more than 138 small entity Mobile Service Carriers that might be affected by the actions and rules adopted in this *Report and Order.*

316. *Broadband PCS Licensees:* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A through F. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. Based on this information, we conclude that the number of broadband PCS licensees that might be affected by the decisions in this *Report and Order* includes, at a minimum, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

d. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. 317. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs, and we mention some of the skills needed to meet these new requirements. Overall, we anticipate that the impact of these rules will be beneficial to small businesses and other filers. By requiring better and more complete submissions earlier in the process, these rules will reduce the need for discovery and other information filings, thereby significantly reducing the burden on small entities.

318. *Formal Complaint Intake Form.* Section 1.721 will require all complainants to complete and submit a Formal Complaint Intake Form with their complaints. The intake form requirement is designed to help complainants avoid procedural and substantive defects that might affect the staff's ability to quickly process complaints and delay full responses by defendant carriers to otherwise legitimate complaints. In addition, the completed form will enable the staff and the defendant carriers to quickly identify the specific statutory provisions

under which relief is being sought in the complaint. Because the proposed form would solicit information that would be already contained in the body of the formal complaint, no additional professional skills would be necessary to complete the form. No commenters propose alternatives to the Formal Complaint Intake Form that would both ease the burden of small businesses and accomplish the Commission's objectives.

319. *Pre-Filing Activities.* The amended rules will require a complainant to certify that it discussed the possibility of settlement with the defendant carrier's representative(s) prior to filing the complaint. Although this may delay slightly a complainant's filing of a formal complaint, we conclude that this requirement will serve to settle or narrow disputes, or facilitate the compilation and exchange of relevant documentation or other information prior to the filing of a formal complaint with the Commission. No commenters propose alternatives to the pre-filing activities proposals in the *NPRM* that would both ease the burden of small businesses and accomplish the Commission's objectives.

320. *Service.* The amended rules will require complainants to personally serve complaints directly on defendants or their registered agents for service of process, such that the defendant's time to answer will begin to run upon receipt of the complaint from the complainant. Parties will be required to serve all pleadings subsequent to the complaint by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery.

321. *Pleadings and Discovery.* The complaint, answer, and any authorized reply must include: (1) full statements of relevant, material facts with all such documents and affidavits that the party intends to rely on to support its claims or defenses; (2) the name and address of each individual likely to have discoverable information relevant to the disputed facts alleged in the pleadings, identifying the subjects of information; (3) a description by category and location of all documents in the possession, custody, or control of the party that are relevant to the matters in dispute; (4) an inventory of all documents and affidavits produced or identified and of all individuals identified; (5) proposed findings of fact, conclusions of law, and legal analysis. Claims based on information and belief will only be accepted if they are made in good faith and the complainant states in an affidavit why the supporting facts could not be reasonably ascertained. Amendments to complaints will be generally prohibited. The defendant must file its answer within twenty days after service of the complaint. General denials are prohibited. Replies will only be permitted to respond to affirmative defenses and failure to reply to an affirmative defense will be considered an admission of the affirmative defense. All motions to compel discovery must contain a certification that a good faith attempt to resolve the dispute was made prior to filing the motion. A party's failure to file an opposition to a motion may constitute grounds for granting the motion. Oppositions to motions must be filed within five business days of the filing of the motion. All pleadings that seek Commission orders, as well as the orders themselves, must contain proposed findings of fact and conclusions of law, with supporting legal analysis, and these submissions must be submitted in both hard copy and on computer disks in ''read only'' mode and formatted in the Commission's wordprocessing program. The parties will be required to submit a joint statement of stipulated facts, disputed facts, and key legal issues two days prior to the initial status conference. Briefs will be generally prohibited in cases in which no discovery is conducted and staff will have discretion to limit the scope and timing of any authorized briefs.

322. Self-executing discovery is eliminated and all discovery requests shall be subject to staff authorization. The complainant must file and serve ten written interrogatory requests concurrently with its complaint and the defendant must file and serve ten written interrogatory requests by the time it serves its answer. The complainant will be permitted to file and serve an additional five written interrogatory requests within three calendar days following service of the answer, provided that such interrogatory requests shall only be directed at specific factual allegations made by a defendant in support of its affirmative defenses. Additional ''extraordinary'' discovery in the form of requests for document production, depositions and additional interrogatories will be generally prohibited. The staff will consider the interrogatory requests propounded, issue rulings and direct the parties accordingly at the initial status conference and retain discretion to limit the scope of permissible interrogatories and modify or otherwise relax the discovery procedures in particular cases (including possible document production, depositions, and additional interrogatories). Staff will have discretion to require the use of scanning or other technology on an individual case basis where review of large numbers of documents is necessary.

323. *Status Conferences.* An initial status conference will take place ten business days after the filing of the answer unless otherwise ordered by the staff. Prior to the initial status conference, the parties must meet and confer regarding: (1) settlement prospects; (2) discovery; (3) issues in dispute; (4) schedules for pleadings; (5) joint statements of stipulated facts, disputed facts, and key legal issues; and (6) in a section 271(d)(6)(B) proceeding, whether the parties agree to waive the section 271(d)(6)(B) ninety-day resolution deadline. All proposals agreed to and disputes remaining after the ''meet and confer'' must be reduced to writing and submitted to the staff two business days prior to the initial status conference. Parties must submit a joint proposed order of the rulings made in a status conference within twenty-four hours of the conference, unless otherwise directed by the staff. Alternatively, if an audio recording or a stenographer's transcription of a status conference is made, the parties must submit, within three business days, unless otherwise directed by the staff, and in lieu of a joint proposed order, either a transcript of such recording and a copy of the audio recording or a copy of the stenographer's transcript.

324. These amended rules may place a greater burden on parties, including small business entities, to decide issues such as discovery within a short time frame. These rules, however, will enable the Commission to resolve many preliminary issues efficiently at the initial status conference and thereby prevent the parties from wasting resources through delay. The Commission retains the discretion to reschedule the status conference to provide more time to parties who are not under statutory deadlines.

325. *Cease, Cease and Desist Orders and Other Forms of Interim Relief.* We will not delineate specific legal and evidentiary standards for issuance of cease and cease and desist orders, but will consider such requests on a case-by-case basis.

326. In the *NPRM*, in conjunction with our proposal to establish legal and evidentiary standards for issuance of cease and cease and desist orders, we had noted that some courts consider the following factors prior to issuing interim relief: (1) likelihood of success on the merits; (2) the threat of irreparable harm absent the injunction; (3) no substantial injury to other parties; and (4) the furtherance of the public interest.

Several commenters stated that a more relaxed standard should apply, especially for resellers and small market entrants. We conclude that it is more appropriate to consider requests for interim or injunctive relief on a case-by-case basis. It is impossible to anticipate all of the various factual circumstances that could form the basis of a complaint. Similarly, the level and types of information necessary to sustain or defend against allegations of misconduct by carriers is likely to vary widely.

327. *Damages.* The Commission may exercise discretion to process a complaint in separate liability and damages complaints on its own motion in cases that do not involve one or more of the statutory resolution deadlines and may also encourage complainants to voluntarily separate their complaints into liability and damages complaints. All complaints or supplemental complaints seeking an award of damages must contain either a detailed computation of damages, including supporting documentation and materials, or an explanation why such computation is not included. The Commission may end its adjudication of damages with the determination of the sufficiency of the damages computation method submitted by the complainant, but retain jurisdiction over the proceeding to the extent that the parties are unable to agree on an exact amount of damages by applying the mandated computation method. Parties may request a fourteen day suspension of the damages proceedings, during which parties may attempt to negotiate a settlement or use ADR procedures. Staff will have discretion to require a defendant to either post a bond for or place in an escrow account the amount the Commission determines is likely to be awarded.

328. *Cross-Complaints and Counterclaims.* All counterclaims and cross-complaints will be required to be filed in separate actions. No commenters propose alternatives to the proposals for cross-complaints and counterclaims in the *NPRM* that would both ease the burden of small businesses and accomplish the Commission's objectives. Although this rule may require small businesses to litigate certain related claims as independent actions, the existence of statutory deadlines makes this necessary. Prohibiting the introduction of counterclaims and cross-complaints late in the complaint proceeding will prevent parties from losing such claims because they did not have sufficient time during which to substantiate their claims.

329. Upon an appropriate showing of financial hardship or other public interest factors, format and content requirements shall be waived. In addition, the staff will retain discretion to take into account the burden of most of these new requirements on a party that is a small business entity. Finally, these rules apply only to section 208 complaints that are filed with the Commission. Complainants wishing to assure themselves of the ability to utilize full discovery, for example, are not precluded from filing their complaints in federal district court.

e. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. 330. NAD proposes that consumers, especially *pro se* consumers with disabilities, be permitted to serve complaints by facsimile transmission or Internet. We have rejected NAD's proposal. We decline to authorize service by Internet at this time because we have received insufficient comments on the issue, given the significance of permitting electronic filing or service of complaint pleadings. This issue may be addressed at a later date, following implementation of procedures pursuant to our rulemaking regarding the electronic filing of documents in rulemaking proceedings. We reject NAD's proposal to permit service of complaints by facsimile transmission because we conclude that service of the complaint must be accomplished in the most reliable manner possible. Although we are permitting service of pleadings subsequent to the complaint to be by facsimile transmission, such service must be accompanied by mailed hard copies in the event of faulty transmission. Because we are requiring the defendant to submit its answer within twenty days of receipt of the complaint by the complainant, any delay or uncertainty in the receipt of the complaint would unduly infringe on the defendant's due process rights.

331. Some commenters suggest alternatives to the rules adopted regarding format and content and discovery. The *NPRM* had proposed that information and belief allegations be prohibited. ACTA, ATSI, Bechtel & Cole, KMC, MFS, and NAD propose that complainants be permitted to submit allegations based on information and belief because some small complainants and small businesses would be unable to obtain information in the possession of large defendants. We agreed with these commenters and the rule we adopt will permit information and belief allegations if they are made in good faith and the complainant states in an affidavit why the supporting facts could not be reasonably ascertained.

332. ATSI proposes that different, less rigorous complaint procedures be implemented for complainants alleging violations of section 260, pertaining to the provision of telemessaging service, because many of those complainants would be fledgling small businesses. TRA proposes special expedited procedures for resale carrier complainants, who may be dwarfed in size and resources by their underlying network service providers. For the following reasons, we decline to adopt the proposals of ATSI and TRA to establish separate complaint procedures for small business complainants. First, we conclude that having separate sets of procedures for certain types of complaints would create confusion for parties who might be unclear as to which rules to follow and might even lead to continuous and inadvertent violations of our procedural rules. Second, we conclude that separate complaint procedures would permit parties to exploit our rules by alleging certain violations in order to manipulate the time frame or level of evidentiary support required in a particular complaint. For example, a complainant alleging that a BOC has violated certain provisions of the Act might be tempted to add an allegation that the BOC has also failed to meet a condition required for approval for provision of interLATA services in violation of section 271, in order to take advantage of the ninety-day resolution deadline mandated by section 271(d)(6)(B). Third, to the extent that certain commenters contend that subjecting all complaints to expedited procedures will unnecessarily work hardships on complainants and defendants in cases without statutory deadlines, we note that the Commission will retain considerable discretion to accommodate the needs of parties in cases where no statutory deadline applies. Finally, separate sets of procedures would be administratively burdensome for the Commission. Not only would it be cumbersome to promulgate separate sets of procedures, but it would decrease staff efficiency to apply different procedural rules to different complaints.

333. Several commenters object to the complete prohibition on discovery that was mentioned in the *NPRM*, on the grounds that small complainants might be unable to obtain information in the sole possession of large defendant carriers. We have taken these concerns into account in our rule which permits parties to submit discovery requests to be ruled upon by the initial status conference. This rule gives parties,

including small businesses, an opportunity to make their cases for or against limited discovery early in the proceedings and also limits each party's ability to use discovery for delay or other purposes unrelated to the merits of the dispute. This abbreviation of the discovery process and subsequent expedited complaint resolution is necessary to enable the Commission to foster the pro-competitive policies of the 1996 Act by resolving promptly marketplace issues that could impede the development of competition in the telecommunications field.

334. Although these amended rules may place a greater burden on a small business entity to provide better legal and factual support early in the process, we conclude that it does not significantly alter the level of evidentiary and legal support that would be ultimately required of parties in formal complaint actions pursuant to the past rules. It may, however, make it more difficult for complainants, including small businesses, to gather the information needed to prevail on their complaints. Potentially higher initial costs may be somewhat offset by the prompt resolution of complaints and the avoidance of protracted and costly discovery proceedings and briefing requirements. It has been noted, for example, that the overall litigation costs of ''rocket docket'' cases in the U.S. District Court for the Eastern District of Virginia are lower than the costs of cases that take longer to resolve. Indeed, by requiring better and more complete submissions earlier in the process, these amended rules reduce the need for discovery and other information filings, thereby significantly reducing the burden on small business entities. Although the requirement for certification of attempted settlement of discovery disputes may delay slightly the filing of a motion to compel, we conclude that this requirement will serve to settle or narrow many discovery disputes.

335. CBT suggests that parties be permitted to attend status conferences by telephone conference call to decrease burdens and expenses for parties located outside of Washington, D.C. We agree and will permit parties to attend by telephone conference call.

336. No commenters propose alternatives to the damages proposals in the *NPRM* that would both ease the burden of small businesses and accomplish the Commission's objectives. Although these damages rules may require small business entities to postpone litigation of damages issues, any increased costs will be somewhat offset by the prompt resolution of the liability issues in complaints and the avoidance of protracted and costly discovery proceedings and briefing requirements in the initial proceeding. Permitting parties with a settlement period during a damages phase can contribute to parties reaching a mutually satisfactory solution. The bond and escrow account requirements would only be implemented in certain situations, based upon staff consideration of several factors, including the balance of hardships between the complainant and defendant.

337. As noted, upon an appropriate showing of financial hardship or other public interest factors, format and content requirements shall be waived. APCC and NYNEX propose specific revenue levels that would qualify a party to be eligible for a good cause waiver. GST, KMC, and MFS suggest having parties complete a ''waiver'' form which would contain a statement of financial hardship. We conclude that waiver requests shall be considered on a case-by-case-basis and should not be limited to financial hardship reasons. Such discretion to grant waivers of the format and content requirements based on financial hardship and other public interest factors will ensure, pursuant to section 208, that ''any person'' has the right to complain to the Commission about acts or omissions by a carrier that contravene the Act. For this reason, we do not agree with APCC or NYNEX that financial hardship should be determined solely based on set revenue or asset levels. The range of potential complainants under section 208 is broad and may include individuals, state commissions, municipalities, associations, and other entities of all forms and sizes. Likewise, the size and makeup of defendant carriers will vary greatly. Thus we conclude that waiver determinations should be made on a case-by-case basis. The Commission shall make every effort to apply its discretion in a consistent and fair manner to strike an appropriate balance between strict compliance with the rules and the needs of certain parties for more lenient requirements and timetables. APCC also suggests that a party that receives a good cause waiver should also be granted relief from discovery limitations. We conclude that the Commission shall have discretion to waive or modify some or all of its rules as appropriate when a waiver is granted for good cause shown.

338. MFS, GST, and USTA additionally suggest that the Commission promulgate model or form complaints or pleadings for *pro se* parties. We find that § 1.721(b) of the rules contains a suggested format for formal complaints that is clear and explicit and that no further form complaints or model pleadings for *pro se* complainants are necessary. Furthermore, the Enforcement Division of the Common Carrier Bureau currently provides, via the Internet, direct mailings, and public reference room access, a fact sheet designed to instruct consumers on how to file a formal complaint with the Commission. Finally, we conclude that the range of subjects that could conceivably be contained within a pleading is too broad for a model pleading form to be of much utility to *pro se* parties.

339. Overall, we conclude that there will be a significant positive economic impact on small entity carriers that, as a result of this rulemaking, will find their complaints resolved expeditiously. The establishment of these rules of practice and procedure shall, by providing a forum for prompt resolution of complaints of unreasonable, discriminatory, or otherwise unlawful conduct by BOCs and other telecommunications carriers, will foster robust competition in all telecommunications markets.

f. Report to Congress. 340. The Commission will send a copy of the *Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers,* Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801 (a)(1)(A). A summary of this *Report and Order* and this FRFA will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

V. Ordering Clauses

341. Accordingly, *It is ordered that* pursuant to sections 1, 4, 201–205, 208, 260, 271, 274, and 275 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 208, 260, 271, 274, and 275, the policies, rules, and requirements set forth herein are adopted.

342. It is further ordered that 47 CFR Parts 0 *and 1, Are amended* as set forth below effective March 18, 1998.

343. *It is further ordered* that the Commission's Office of Public Affairs *Shall send* a copy of this *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

344. The *Report and Order* Is adopted, and the requirements contained herein will become effective March 18, 1998.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 0 and 1 of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.291 is amended by revising paragraph (d) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(d) *Authority to designate for hearing.* The Chief, Common Carrier Bureau shall not have authority to designate for hearing any formal complaints which present novel questions of law or policy which cannot be resolved under outstanding precedents or guidelines. The Chief, Common Carrier Bureau shall not have authority to designate for hearing any applications except applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines.

* * * * *

PART 1—PRACTICE AND PROCEDURE

3. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

4. Section 1.47 is amended by revising paragraphs (b) and (d), and adding new paragraph (h) to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(b) Where any person is required to serve any document filed with the Commission, service shall be made by that person or by his representative on or before the day on which the document is filed.

* * * * *

(d) Except in formal complaint proceedings against common carriers under §§ 1.720 through 1.736, documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. *See* § 1.736.

* * * * *

(h) Every common carrier subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding before the Commission. Such designation shall include, for both the carrier and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. The carrier shall additionally list any other names by which it is known or under which it does business, and, if the carrier is an affiliated company, the parent, holding, or management company. Such information shall be filed with the Formal Complaints and Investigations Branch of the Common Carrier Bureau. Carriers must notify the Commission within one week of any changes in their information. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier by leaving a copy thereof with such designated agent at his office or usual place of residence. If a carrier fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

5. Section 1.720 is amended by revising the introductory paragraph and paragraph (h) and adding paragraph (j) to read as follows:

§ 1.720 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments. Commission proceedings may also require or permit other written submissions such as briefs, written interrogatories, and other supplementary documents or pleadings. All written submissions, both substantively and procedurally, must conform to the following standards:

* * * * *

(h) Specific reference shall be made to any tariff provision relied on in support of a claim or defense. Copies of relevant tariffs or relevant portions of tariffs that are referred to or relied upon in a complaint, answer, or other pleading shall be appended to such complaint, answer, or other pleading.

* * * * *

(j) Pleadings shall identify the name, address, telephone number, and facsimile transmission number for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

6. Section 1.721 is amended by revising paragraphs (a)(5), (a)(6), (a)(7), (a)(8) and adding paragraphs (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), (c) and (d) to read as follows:

§ 1.721 Format and content.

(a) * * *

(5) A complete statement of facts which, if proven true, would constitute such a violation. All material facts must be supported, pursuant to the requirements of § 1.720(c) and paragraph (a)(11) of this section, by relevant affidavits and documentation, including copies of relevant written agreements, offers, counter-offers, denials, or other related correspondence. The statement of facts shall include a detailed explanation of the manner and time period in which a defendant has allegedly violated the Act, Commission order, or Commission rule in question, including a full identification or description of the communications, transmissions, services, or other carrier conduct complained of and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the plaintiff's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(6) Proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the complaint;

(7) The relief sought, including recovery of damages and the amount of damages claimed, if known;

(8) Certification that the complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier that invited a response within a reasonable period of time and a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint. If no additional steps were taken, such certificate shall state the reason(s) why the complainant believed such steps would be fruitless;

(9) Whether a separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or same set of facts, in whole or in part, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission;

(10) An information designation containing:

(i) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge;

(ii) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control, that are relevant to the facts alleged with particularity in the complaint. Such description shall include for each document:

(A) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(B) The author, preparer, or other source;

(C) The recipient(s) or intended recipient(s);

(D) Its physical location; and

(E) A description of its relevance to the matters contained in the complaint; and

(iii) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(11) Copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the complaint;

(12) A completed Formal Complaint Intake Form;

(13) Verification of the filing payment required under § 1.1105(1)(c) or (d); and

(14) A certificate of service.

* * * * *

(c) Where the complaint is filed pursuant to § 47 U.S.C. § 271(d)(6)(B), the complainant shall clearly indicate whether or not it is willing to waive the ninety-day resolution deadline contained within 47 U.S.C. 271(d)(6)(B), in accordance with the requirements of § 1.736.

(d) The complainant may petition the staff, pursuant to § 1.3, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

Section 1.722 is revised to read as follows:

§1.722 Damages.

(a) In a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim in accordance with the requirements of paragraph (c) of this section.

(b) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded, however, upon a supplemental complaint that complies fully with the requirement of paragraph (c) of this section, based upon a finding of liability by the Commission in the original proceeding. *Provided that:*

(1) If recovery of damages is first sought by supplemental complaint, such supplemental compalint must be filed within, and recovery is limited to, the statutory limitations contained in section 415 of the Communications Act;

(2) If recovery of damages is clearly and unequivocally requested in the original complaint, by identification of the claim giving rise to the damages and a general statement of the nature of the injury suffered, such claim for damages shall relate back to the filing date of the original formal complaint if:

(i) The complainant clearly states in the original complaint that it chooses to have liability and prospective relief issues resolved prior to the consideration of damages issues; and

(ii) The complainant files its supplemental complaint for damages within sixty days after public notice (as defined in § 1.4(b)) of a decision on the merits of the original complaint.

(3) Where a complainant voluntarily elects to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of paragraph (b)(2) of this section, the Commission will resolve the liability complaint within any applicable complaint resolution deadlines contained in the Act and defer adjudication of the damages complaint until after the liability complaint has been resolved.

(c) In all cases in which recovery of damages is sought, it shall be the responsibility of the complainant to include, within either the complaint or the supplemental complaint for damages filed in accordance with paragraph (b) of this section, either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(2) An explanation of:

(i) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists; and

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(d) Where a complainant voluntarily elects to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of paragraph (b)(2) of this section, the following procedures *may* apply in the event that the Commission determines that the defendant is liable based upon its review of the original complaint:

(1) Issues concerning the amount, if any, of damages may be either designated by the Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge. Such Administrative Law Judge shall be chosen in the following manner:

(i) By agreement of the parties and the Chief Administrative Law Judge; or

(ii) In the absence of such agreement, the Chief Administrative Law Judge shall designate the Administrative Law Judge.

(2) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum

equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(i) The complainant's potential irreparable injury in the absence of such deposit;

(ii) The extent to which damages can be accurately calculated;

(iii) The balance of the hardships between the complainant and the defendant; and

(iv) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(3) The Commission may, in its discretion, suspend ongoing damages proceedings for fourteen days, to provide the parties with a time within which to pursue settlement negotiations and/or alternative dispute resolution procedures.

(4) The Commission may, in its discretion, end adjudication of damages with a determination of the sufficiency of a damages computation method or formula. No such method or formula shall contain a provision to offset any claim of the defendant against the complainant. The parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within thirty days of the release date of the damages order, parties shall submit jointly to the Commission either:

(i) A statement detailing the parties' agreement as to the amount of damages;

(ii) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(iii) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

8. Section 1.724 is amended by revising paragraphs (a), (b), and (c) and adding new paragraphs (f), (g), (h), (i), and (j) to read as follows:

§ 1.724 Answers.

(a) Any carrier upon which a copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within twenty days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defenses to each claim asserted and shall admit or deny the averments on which the complainant relies and state in detail the basis for admitting or denying such averment. General denials are prohibited. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the answer.

* * * * *

(f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

(h) The answer shall contain certification that the defendant has, in good faith, discussed or attempted to discuss, the possibility of settlement with the complainant prior to the filing of the formal complaint. Such certification shall include a brief summary of all steps taken to resolve the dispute prior to the filing of the formal complaint. If no such steps were taken, such certificate shall state the reason(s) why the defendant believed such steps would be fruitless;

(i) Where the complaint is filed pursuant to 47 U.S.C. 271(d)(6)(B), the defendant shall clearly indicate its willingness to waive the 90-day resolution deadline contained within 47 U.S.C. 271(d)(6)(B), in accordance with the requirements of § 1.736.

(j) The defendant may petition the staff, pursuant to § 1.3, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

9. Section 1.725 is revised to read as follows:

§ 1.725 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any carrier that is a party (complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 1.720 through 1.736. For purposes of this subpart, the term ''cross-complaint'' shall include counterclaims.

10. Section 1.726 is revised to read as follows:

§ 1.726 Replies.

(a) Within three days after service of an answer containing affirmative defenses presented in accordance with the requirements of § 1.724(e), a complainant may file and serve a reply containing statements of relevant, material facts that shall be responsive to only those specific factual allegations made by the defendant in support of its affirmative defenses. Replies which contain other allegations or arguments will not be accepted or considered by the Commission.

(b) Failure to reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the reply.

(d) The reply shall include an information designation containing:

(1) The name, address and position of each individual believed to have firsthand knowledge about the facts alleged with particularity in the reply, along with a description of the facts within any such individual's knowledge.

(2) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the reply. Such description shall include for each document:

(i) The date prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

Section 1.727 is amended by revising paragraphs (b), (c), (d), and (e) and adding new paragraphs (g) and (h) to read as follows:

§ 1. 727 Motions.

* * * * *

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 1.720(c), except for those facts of which official notice may be taken.

(c) The moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly marked as a ''Proposed Order.'' The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 1.734(d). Where appropriate, the proposed order format should conform to that of a reported FCC order.

(d) Oppositions to any motion shall be accompanied by a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly captioned as a ''Proposed Order.'' The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 1.734(d). Where appropriate, the proposed order format should conform to that of a reported FCC order.

(e) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

* * * * *

(g) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(h) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under § 1.720(g).

2. Section 1.729 is revised to read as follows:

§ 1.729 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to paragraph (a) of this section shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows:

(1) By the defendant, within ten calendar days of service of the requests for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer;

(2) By the complainant, within five calendar days of service of the requests for interrogatories; and

(3) In no event less than three calendar days prior to the initial status conference as provided for in § 1.733(a).

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to paragraph (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to paragraph (b) of this section, at the initial status conference, as provided for in § 1.733(a)(5), and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to paragraph (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response to Commission-ordered discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 1.727.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides:

(1) Indexing by useful identifying information about the documents; and

(2) Technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

13. Section 1.730 is removed.

14. Section 1.731 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.731 Confidentiality of information produced or exchanged by the parties.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

* * * * *

15. Section 1.732 is amended by revising paragraphs (a), (b), (c), (d), (f), and adding new paragraph (h) to read as follows:

§ 1.732 Other required written submissions.

(a) The Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(b) Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned. The Commission may, in its discretion, limit the scope of any briefs to certain subjects or issues. A party shall attach to its brief copies of all documents, data compilations, tangible things, and affidavits upon which such party relies or intends to rely to support the facts alleged and legal arguments made in its brief and such brief shall contain a full explanation of how each attachment is relevant to the issues and matters in dispute. All such attachments to a brief shall be documents, data compilations or tangible things, or affidavits made by persons, that were identified by any party in its information designations filed pursuant to §§ 1.721(a)(10)(i), (a)(10)(ii), 1.724(f)(1), (f)(2), and 1.726(d)(1), (d)(2). Any other supporting documentation or affidavits that is attached to a brief must be accompanied by a full explanation of the relevance of such materials and why such materials were not identified in the information designations. These briefs shall contain the proposed findings of fact and conclusions of law which the filing party is urging the Commission to adopt, with specific citation to the record, and supporting relevant authority and analysis.

(c) In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs. If the Commission does authorize the filing of briefs in cases in which discovery is not conducted, briefs shall be filed concurrently by both the complainant and defendant at such time as designated by the Commission staff and in accordance with the provisions of this section.

(d) In cases in which discovery is conducted, briefs shall be filed concurrently by both the complainant and defendant at such time designated by the Commission staff.

* * * * *

(f) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

* * * * *

(h) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 1.733(a).

16. Section 1.733 is amended by revising paragraphs (a) introductory text, (a)(2), (a)(4), (a)(5), (a)(6), (b), (c), (d), and (e) and adding new paragraphs (f), (g), and (h) to read as follows:

§ 1.733 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. Unless otherwise ordered by the Commission, an initial status conference shall take place, at the time and place designated by the Commission staff, ten business days after the date the answer is due to be filed. A status conference may include discussion of:

* * * * *

(2) The necessity for or desirability of additional pleadings or evidentiary submissions;

* * * * *

(4) Settlement of all or some of the matters in controversy by agreement of the parties;

(5) Whether discovery is necessary and, if so, the scope, type and schedule for such discovery;

(6) The schedule for the remainder of the case and the dates for any further status conferences; and

* * * * *

(b)(1) Parties shall meet and confer prior to the initial status conference to discuss:

(i) Settlement prospects;

(ii) Discovery;

(iii) Issues in dispute;

(iv) Schedules for pleadings;

(v) Joint statement of stipulated facts, disputed facts, and key legal issues; and

(vi) In a 47 U.S.C. 271(d)(6)(B) proceeding, whether or not the parties agree to waive the 47 U.S.C. 271(d)(6)(B) 90-day resolution deadline.

(2) Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff at least two business days prior to the scheduled initial status conference.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, *inter alia,* procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Parties may make, upon written notice to the Commission and all attending parties at least three business days prior to the status conference, an audio recording of the Commission staff's summary of its oral rulings. Alternatively, upon agreement among all attending parties and written notice to the Commission at least three business days prior to the status conference, the parties may make an audio recording of, or use a stenographer to transcribe, the oral presentations and exchanges between and among the participating parties, insofar as such communications are ''on-the-record'' as determined by the Commission staff, as well as the Commission staff's summary of its oral rulings. A complete transcript of any audio recording or stenographic transcription shall be filed with the Commission as part of the record, pursuant to the provisions of paragraph (f)(2) of this section. The parties shall make all necessary arrangements for the use of a stenographer and the cost of transcription, absent agreement to the contrary, will be shared equally by all parties that agree to make the record of the status conference.

(f) The parties in attendance, unless otherwise directed, shall either:

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by 5:30 pm, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be submitted both as hard copy and on computer disk in accordance with the requirements of § 1.734(d); or

(2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by 5:30 pm., Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

(i) A transcript of the audio recording of the Commission staff's summary of its oral rulings;

(ii) A transcript of the audio recording of the oral presentations and exchanges between and among the participating parties, insofar as such communications are ''on-the-record'' as determined by the Commission staff, and the Commission staff's summary of its oral rulings; or

(iii) A stenographic transcript of the oral presentations and exchanges between and among the participating parties, insofar as such communications are ''on-the-record'' as determined by the Commission staff, and the Commission staff's summary of its oral rulings.

(g) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(h) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties and/or counsel present.

17. Section 1.734 is amended by revising paragraph (c) and adding new paragraph (d) to read as follows:

§ 1.734 Specifications as to pleadings, briefs, and other documents; subscription.

* * * * *

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current wordprocessing software. Each disk should be submitted in ''read only'' mode. Each disk should be clearly labelled with the party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

18. Section 1.735 is amended by revising paragraphs (b), (d), (e), and (f) to read as follows:

§ 1.735 Copies; service; separate filings against multiple defendants.

* * * * *

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with part I, subpart G (*see* § 1.1105(1)(c) and (d)) and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) If the complaint is filed against a carrier concerning matters within the responsibility of the Common Carrier Bureau (*see* § 0.291 of this chapter), serve two copies on the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau;

(3) If the complaint is filed against a wireless telecommunications carrier concerning matters within the responsibility of the Wireless Telecommunications Bureau (*see* § 0.331 of this chapter), serve two copies on the Chief, Compliance and Litigation Branch, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau;

(4) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (*see* § 0.261 of this chapter), serve a copy on the Chief, Telecommunications Division, International Bureau, and serve two copies on the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau; and

(5) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part I, subpart G (*see*

§ 1.1105(1)(c) and (d)), and file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

* * * * *

(d) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(e) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by facsimile transmission to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by regular U.S. mail delivery, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by regular U.S. mail to all parties, a schedule detailing the date the answer will be due and the date, time and location of the initial status conference.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery, together with a proof of such service in accordance with the requirements of § 1.47(g). Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service such as, or comparable to, the US Postal Service Express Mail, United Parcel Service or Federal Express; or

(3) Service by facsimile transmission that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by facsimile transmission that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

19. Section 1.736 is added under the undesignated center heading ''Formal Complaints'' to read as follows:

§ 1.736 Complaints filed pursuant to 47 U.S.C. 271(d)(6)(B).

(a) Where a complaint is filed pursuant to 47 U.S.C. 271(d)(6)(B), parties shall indicate whether they are willing to waive the ninety-day resolution deadline contained in 47 U.S.C. 271(d)(6)(B) in the following manner:

(1) The complainant shall so indicate in both the complaint itself and in the Formal Complaint Intake Form, and the defendant shall so indicate in its answer; or

(2) The parties shall indicate their agreement to waive the ninety-day resolution deadline to the Commission staff at the initial status conference, to be held in accordance with § 1.733 of the rules.

(b) Requests for waiver of the ninety-day resolution deadline for complaints filed pursuant to 47 U.S.C. 271(d)(6)(B) will not be entertained by the Commission staff subsequent to the initial status conference, absent a showing by the complainant and defendant that such waiver is in the public interest.

20. Section 1.1105 is amended by revising (1)(c) and adding (1)(d) to read as follows:

§ 1.1105 Schedule of charges for applications and other filings in the common carrier services.

Action	FCC form No.	Fee amount	Payment type code	Address
1. * * *				
c. Formal Complaints and Pole Attachment Complaints, except those relating to wireless telecommunications services, Filing Fee.	Corr. & 159	150	CIZ	Federal Communications Commission, Common Carrier Enforcement, P.O. Box 358120, Pittsburgh, PA 15251–5120.
d. Formal Complaints relating to wireless telecommunications services, including cellular telephone, paging, personal communications services, and other commercial mobile radio services, Filing Fee.	Corr. & 159	150	CIZ	Federal Communications Commission, Wireless Telecommunications Bureau, P.O. Box 358128, Pittsburgh, PA 15251–5120.

* * * * *

Note: This attachment will not be published in the Code of Federal Regulations

Attachment

[Approved by OMB; 3060–XXXX; Expires XX/XX/XX; Est. Avg. Burden: 30 min.]

Formal Complaint Intake Form—FCC Form 485

1. Case Name __________

2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable):

____

____

____

____

3. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended:

____

4. Complaint is subject to the following statutory resolution deadlines:

____

____

Answer (Y)es, (N)o or N/A to the following:

______ 5. Complaint conforms to the specifications prescribed by 47 CFR §§ 1.49, 1.734.

______ 6. Complaint complies with the pleading requirements of 47 CFR § 1.720.

______ 7. Complaint conforms to the format and content requirements of 47 CFR § 1.721:

______ a. Complaint contains a complete statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.

______ b. Relevant documentation and/or affidavits are attached, including agreements, offers, counter-offers, denials, or other relevant documentation.

______ c. If damages are sought, contains specified amount and nature of damages claimed.

______ d. Contains certification that complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier that invited a response within a reasonable period of time and has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.

______ e. Suit has been filed with the Commission, in another court, or government agency on the basis of the same cause of action or the same set of facts, in whole or in part. If yes, please explain:

____

____

______ f. Seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:

____

____

______ g. Includes an information designation that contains:

______ (1) A description by category and location, of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the complaint; and

______ (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge.

______ h. Attached are copies of all documents, data compilations and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the complaint.

______ i. Certificate of service is attached.

______ j. Copy of payment of $150.00 filing fee, in accordance with 47 CFR § 1.1105(1)(c), is attached.

______ 8. If complaint is filed pursuant to 47 U.S.C. 271(d)(6)(B), complainant requests waiver of the ninety day complaint resolution deadline.

______ 9. All reported FCC orders relied upon have been properly cited in accordance with 47 CFR § 1.14.

______ 10. Copy of complaint has been served on defendant's registered agent for service in accordance with 47 CFR § l.47 (b), (d), (h) and 47 CFR § 1.735(d).

______ 11. If more than ten pages, the complaint contains a table of contents as specified in 47 CFR § 1.49(b).

______ 12. The correct number of copies, required by 47 CFR § 1.51(c), if applicable, and 47 CFR § 1.735(b) have been filed.

______ 13. Complaint has been properly signed and verified in accordance with 47 CFR § 1.52.

______ 14. If complaint is by multiple complainants, it conforms with the requirements of 47 CFR § 1.723(a).

______ 15. If complaint involves multiple grounds, it complies with the requirements of 47 CFR § 1.723(b).

______ 16. If complaint is directed against multiple defendants, it complies with the requirements of 47 CFR § 1.735 (a)–(b).

Notice: Sections 206 to 209 of the Communications Act of 1934, as amended, provide the statutory framework for rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Complainant must submit a completed FCC form 485 with any formal complaint to indicate that the complaint satisfies the procedural and substantive requirements under the Act and our rules. The information will be used to determine the sufficiency of the complaint and to resolve the merits of the dispute between the parties. We have estimated that each response to this collection of information will take, on average, 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD–PERM, Paperwork Reduction Project (3060–0411), Washington, D.C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–XXXX).

The Foregoing Notice is Required by the Privacy Act of 1974, Pub. L. 93–579, December 31, 1994, 5 U.S.C. 552a(E)(3), and the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, 44 U.S.C. 3507.

[FR Doc. 98–173 Filed 1–6–98; 8:45 am]

BILLING CODE 6712–01–P

federal register

Wednesday
January 7, 1998

Part IV

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 563 and 536b

Capital Distributions: Withdrawal of Proposed Rule and Regulation Amendments; Proposed Rules

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 97–127]

RIN 1550–AA72

Capital Distributions; Withdrawal of Proposed Rule

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: The OTS is withdrawing the proposed rule amending its capital distributions regulation originally published on December 5, 1994. Elsewhere in today's issue of the **Federal Register**, the OTS has published a new proposal making more extensive revisions to the regulation.

DATES: Proposed amendment to § 563.134 is withdrawn on January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Edward J. O'Connell, III, Project Manager, (202) 906–5694; Robyn Dennis, Manager, (202) 906–5751, Supervision Policy; Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906–7052; or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

In 1990, the OTS adopted the current capital distributions rule at 12 CFR 563.134. The rule permits a savings association to make a capital distribution based on its level of capitalization. The regulation was originally intended to restrict capital distributions by savings associations that did not meet the capital requirements imposed in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

On December 5, 1994, the OTS issued a proposed rule revising the capital distributions regulation. 59 FR 62356. The proposed rule was designed to incorporate statutory changes contained in the prompt corrective action statute at 12 U.S.C. 1831o (PCA requirements) and to reflect the improved capital position of the thrift industry.

Section 303 of the CDRIA (12 U.S.C. 4803) requires the OTS to streamline and modify its regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303 also requires the OTS to remove inconsistencies and outmoded and duplicative requirements from its regulations.

Consistent with these requirements, elsewhere in today's **Federal Register** the OTS is proposing a new rule that updates, simplifies, and streamlines § 563.134. Like the 1994 proposal, today's proposed rule reflects PCA requirements. The new proposal also contains changes designed to simplify the rule and to conform OTS's capital distributions requirements with those that apply to banks. The proposal utilizes plain English drafting techniques to make the regulation easier to understand.

Withdrawal of the Proposed Rule

In light of the newly proposed revisions to § 563.134, the OTS withdraws its proposal published in the **Federal Register** on December 5, 1994 at 59 FR 62358.

Dated: December 10, 1997.

By the Office of Thrift Supervision.

Ellen S. Seidman,

Director.

[FR Doc. 98–204 Filed 1–6–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 563b

[No. 97–128]

RIN 1550–AA72

Capital Distributions

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing amendments to its capital distributions regulation. Today's rule updates, simplifies, and streamlines this regulation to reflect OTS's implementation of the system of prompt corrective action (PCA) established under the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The proposal is also designed to conform OTS's capital distribution requirements to those of the other banking agencies.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, Attention Docket No. 97–128. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Edward J. O'Connell, III, Project Manager, (202) 906–5694; Robyn Dennis, Manager, (202) 906–5751, Supervision Policy; Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906–7052; Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS is proposing to update, simplify, and streamline its capital distributions regulation. This proposal follows a detailed review of the regulation to determine whether it should be revised, reduces burden consistent with statutory requirements, and is written in a clear, straightforward style. Today's proposal is made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA). Consistent with section 303, the proposed amendments would bring the OTS's capital distributions regulation into greater conformity with the requirements of the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), and the Federal Deposit Insurance Corporation (FDIC).

The proposal reduces regulatory burden and compliance costs associated with some capital distributions. Under the existing rules, all savings associations must file a notice or an application for approval before making any capital distribution. Under the proposed rule, however, certain savings associations would not be required to file with the OTS. Specifically, for savings associations that would remain at least adequately capitalized following the capital distribution and meet other specified requirements, the OTS is proposing to eliminate any requirement for notice or application for cash dividends below a specified amount. An application, however, would always be required for any capital distribution in excess of the specified amount. In addition, a notice or application would be required under other circumstances, such as where a distribution would reduce the amount of or retire common or preferred stock (including stock repurchases) or debt instruments included in capital.

II. Background

In 1990, the OTS adopted a capital distributions regulation, 12 CFR 563.134.[1] This regulation was designed to apply a uniform regulatory approach to all capital distributions made by savings associations, including dividends, stock repurchases, and cash-out mergers. The rule established a ''tiered'' approach, which permitted a savings association to make distributions based on its level of capitalization. Savings associations that met fully phased-in capital requirements had greater flexibility to make capital distributions than other savings associations. All savings associations were required to provide notice to the OTS, or to apply for approval, before making any capital distribution. When the OTS adopted this rule, the thrift industry was generally undercapitalized and thrifts were under pressure to increase capital to meet rapidly rising standards. The regulation was intended to restrict capital distributions by savings associations that did not meet the capital requirements imposed in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

In September 1992, the OTS promulgated its Prompt Corrective Action Final Rule (PCA Rule).[2] The PCA Rule implemented section 131 of FDICIA, which created a system of supervisory actions indexed to capital levels.[3] Well-capitalized and adequately capitalized insured depository institutions are generally not subject to PCA restrictions.[4] However, undercapitalized, significantly undercapitalized, and critically undercapitalized categories are subject to increasing levels of supervisory restrictions. Under the PCA Rule, OTS uses the ratio of total capital to risk-weighted assets, the ratio of core capital to risk-weighted assets, and the ratio of core capital to total average assets (the leverage ratio) to determine a thrift's PCA category.[5]

The PCA statute prohibits an insured depository institution from making a capital distribution if, after making the distribution, the institution would be undercapitalized. 12 U.S.C. 1831o(d)(1). In the preamble to the 1992 PCA rule, the OTS stated ''that the permissibility of capital distributions will be determined by the [PCA] regulations. A savings association permitted to make a capital distribution under the [PCA] regulations may do so if the amount and type of distribution would be permitted under [the capital distribution regulation, § 563.134].''[6] The OTS also indicated that it would review its capital distributions regulation and consider making amendments that may be necessary based on the PCA statute.[7]

In December 1994, the OTS proposed to revise its capital distributions regulation to reflect the PCA rule and make other changes.[8] After reconsidering the issues underlying the 1994 proposal, the OTS has decided to make further revisions to the capital distributions rules. Accordingly, in a separate document, published in today's **Federal Register**, the OTS has withdrawn its 1994 proposal in favor of today's proposed revisions.

III. Summary of Proposed Rule

Today's proposal updates, simplifies, and streamlines the OTS capital distributions rule in light of the OTS implementation of the PCA requirements. Today's proposal makes changes designed to conform the OTS capital distributions regulation to the rules of the other banking agencies.

The proposed rule would add a new subpart E to part 563 to govern capital distributions by savings associations. The new subpart utilizes plain language drafting techniques consistent with National Performance Review instructions and new guidance in the Federal Register *Document Drafting Handbook* (January 1997 edition). The primary goal of plain language drafting is to make regulations easier for users to understand. The OTS intends to use plain language drafting in other regulatory projects to the extent possible. The provisions of the proposed new subpart are discussed below.

Proposed § 563.140—What Does This Subpart Cover?

Section 563.140 of the proposed rule describes the scope of the regulation. New subpart E would apply to all capital distributions made by savings associations. Because the application of the capital distributions rule to operating subsidiaries raises a variety of questions, the OTS specifically requests comment on this issue.

Proposed § 563.141—What Is a Capital Distribution?

Section 563.141 would define the term ''capital distribution'' to reflect the PCA statutory definition at 12 U.S.C. 1831o(b)(2)(B). The proposed rule defines a capital distribution, in part, as a distribution of cash or other property to a savings association's owners, made on account of their ownership.[9] As provided in the statute, the proposed definition excludes dividends consisting only of a savings association's shares or rights to purchase shares.[10]

The statute also excludes from the definition of capital distribution any amount paid on deposits of a mutual or cooperative institution that the OTS determines is not a distribution for the purposes of 12 U.S.C. 1831o.[11] In accordance with section 1831o(b)(2)(B)(i)(II), the OTS has determined that payments that a mutual savings association is required to make under the terms of a deposit instrument generally are not considered to be capital distributions.[12] Accordingly, these payments are not subject to the capital distributions rule unless either the OTS or FDIC finds that the payment is, in substance, a distribution of capital. *See* proposed § 563.141(d), discussed below.

Consistent with the statutory definition, the proposed regulatory

[1] 55 FR 17185 (July 2, 1990).

[2] 57 FR 44866 (September 29, 1992).

[3] Section 131 of FDICIA added a new section 38 to the Federal Deposit Insurance Act. The provision is codified at 12 U.S.C. 1831o. The OTS's implementing regulations appear at 12 CFR Part 565 (1997).

[4] Under certain circumstances, an institution may be reclassified to a lower capital category or treated as if it were in a lower capital category. See 12 CFR 565.4(c) (1997).

[5] Core capital, which is defined in Part 567 of the OTS's regulations, is the thrift capital measure comparable to Tier 1 capital for banks. 12 CFR Part 567 (1997).

[6] See 57 FR at 44868, fn.4.

[7] Id.

[8] See 59 FR 62356 (December 5, 1994).

[9] A distribution made by a Subchapter S corporation, as defined in 26 U.S.C. 1361, to its owners, including a distribution intended to cover a shareholder's personal tax liability for the shareholder's proportionate share of the taxable income of the institution, is considered to be a capital distribution under this rule.

[10] 12 U.S.C. 1831o(b)(2)(B)(i)(I).

[11] 12 U.S.C. 1831o(b)(2)(B)(i)(II). The OTS recently revised its regulations governing the payment of interest or earnings on deposits. *See* 62 FR 54759 (October 22, 1997) (final rule) and 62 FR 15626 (April 2, 1997) (proposed rule).

[12] Although payments to accountholders may, under certain circumstances, be capital distributions under the regulation, any treatment of mutual accountholders as ''owners'' under the capital distributions regulation should not be construed as having any effect on the concept of ''ownership'' of a mutual association under any other statute or regulation.

definition includes a savings association's payment to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests. In addition, payments to repurchase, redeem, or otherwise acquire debt instruments included in total capital, and any extension of credit to finance an affiliate's acquisition of those shares or interests would be capital distributions under the proposed rule.[13]

Consistent with section 1831o(b)(2)(B)(iii), proposed § 563.141(d) states that a capital distribution includes any transaction the OTS or the FDIC determines to be in substance a distribution of capital. The OTS may make such determinations by order or by regulation. Pursuant to the authority granted under section 1831o(b)(2)(B)(iii), the proposal would add one provision to the definition of capital distribution not specifically addressed in the statutory definition. Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring would be a capital distribution under this provision. The proposed rule would apply to any corporate restructuring, including, for example, cash-out mergers and internal reorganizations. Capital distributions would also include payment to shareholders of an association or shareholders of a holding company by an acquiring association to acquire ownership of the association, other than a distribution of shares. The OTS believes that such payments are in substance a distribution of capital. This provision is based on the existing OTS definition of capital distribution at § 563.134(a)(1)(iv).

In contrast, the OTS does not propose to retain existing § 563.134(a)(1)(iii), which states that a capital distribution includes other distributions charged against the capital accounts of an association. The OTS believes that this provision would be redundant since the distributions it captures would generally be covered under the proposed definition of capital distribution.[14] The OTS specifically solicits comments on whether existing § 563.134(a)(1)(iii) should be added to the final rule.

Proposed § 563.142—What Other Definitions Apply to This Subpart?

Proposed § 563.142 sets forth other definitions that apply to capital distributions. Significant definitions are highlighted below.

To implement the proposed definition of capital distribution at § 563.141(b) and (c), which includes certain payments to affiliates, the proposed rule would add a definition of affiliate. Under the proposed rule, an affiliate would be any company that controls, is controlled by, or is under common control with, another company. The terms "control" and "company" would have the meaning given to those terms in 12 U.S.C. 1841(a)(2) and (b) respectively.

The proposed rule would also add a definition of retained net income. This definition would be introduced in connection with a new provision requiring an application whenever a proposed capital distribution exceeds a specified amount. As discussed below, an application is required whenever the total amount of a capital distribution exceeds a prescribed limit based on net income for the year to date plus retained net income for the preceding two years.[15]

Proposed § 563.142 would retain the current regulation's definitions of capital, net income, and shares with minor modifications.[16] Moreover, the proposed rule would eliminate definitions related to capital tier thresholds.[17] These thresholds have become obsolete as the thrift industry raised its capital to required levels and the phase-in of capital requirements was completed on December 30, 1992.

Proposed § 563.143—Must I File With the OTS?

The current rule requires all savings associations to file either a notice or an application with the OTS before making a capital distribution. Today's proposal would allow savings associations to make certain capital distributions without filing a notice or application under certain circumstances. For savings associations that would remain at least adequately capitalized following the capital distribution and that meet other specified requirements, the OTS is proposing to eliminate any requirement for notice or application for cash dividends below specified amounts.

Section 563.143(a) would describe when a savings association must file an application. Under this proposed provision, a savings association must file an application if the association is not eligible for expedited treatment under OTS's Application Processing Regulation at 12 CFR 516.3(a), or if the capital distribution exceeds specified amounts.

Under § 516.3(a), a savings association is eligible for expedited treatment if it: (1) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS), as revised by the Federal Financial Institutions Examination Council;[18] (2) has a CRA rating of satisfactory or better; (3) has a Compliance rating of 1 or 2; (4) is meeting all of its capital requirements under part 567; and (5) has not been notified by supervisory personnel that it is a problem association or a savings association in troubled condition. Under existing § 563.134(b)(5), the OTS may notify an association that it is "in need of more than normal supervision," and subject it to more rigorous capital distribution requirements. For example, such an association may be required to file an application for prior approval of a distribution, rather than a notice of the distribution. The phrase "in need of more than normal supervision," however, is not defined in existing § 563.134 nor used elsewhere in OTS regulations. The proposed rule would retain similar OTS discretion on this point by requiring an application from any institution that does not meet the requirements for expedited treatment (including the problem association or troubled condition restrictions).[19]

A savings association must also file an application with the OTS if the amount of the capital distribution exceeds a specified amount. Under proposed § 563.143(a)(2), an application would be required if the total amount of all capital distributions, including the proposed capital distribution, for the applicable calendar year would exceed an amount equal to the savings association's net income for that year to date plus the savings association's retained net income for the preceding two years. Thus, without prior application to the OTS, only undistributed net income for the prior two years may be distributed in addition to the current year's undistributed net income. This proposed restriction is similar to

[13] Under this provision, payments from a savings association to an employee stock option plan (ESOP) trust to make payments on a loan previously contracted by the ESOP to purchase shares of the savings association's stock are not considered to be capital distributions. Rather, such payments would be treated as compensation by the savings association to its employees.

[14] See proposed § 563.141(a)–(c).

[15] See proposed § 563.143(a)(2).

[16] See existing 12 CFR 563.134(a)(2), (5) and (6) (1997).

[17] See existing 12 CFR 563.134(a)(3), (4), (7), (8), (9) and (10) (1997).

[18] 61 FR 67021, 67024–67029 (December 19, 1996). The OTS issued a final rule making conforming changes to its regulations that cross-reference the UFIRS. 62 FR 3779, 3780 (January 27, 1997).

[19] See proposed §§ 563.143(a)(1).

limitations imposed upon banks and should promote interagency regulatory conformity consistent with section 303 of CDRIA. It is based on the requirement currently imposed upon national banks under 12 U.S.C. 60 and OCC regulations at 12 CFR 5.64.[20] FRB regulations at 12 CFR 208.19(b) impose a similar requirement on state member banks.

Proposed § 563.143(b) describes when a savings association must file a notice of a capital distribution. This proposed section would apply whenever an application is not otherwise required under § 563.143(a). A savings association would be required to file a notice if it meets any one of four criteria.

First, a notice would be required if the savings association would not be at least adequately capitalized following the distribution. This requirement ensures that a savings association will not violate the PCA provision prohibiting a savings association from declaring any dividend or making any other capital distribution if, following the distribution, the institution would be undercapitalized.[21]

The second criterion is similar to restrictions imposed on upon banks and should promote interagency regulatory conformity consistent with section 303 of CDRIA. Section 563.143(b)(2) is based on section 18(i) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1828(i)). Under this statute, no insured state nonmember bank may, without the FDIC's prior consent, reduce the amount, or retire any part of its common or preferred capital stock, or retire any part of its capital notes and debentures.[22] Section 563.143(b)(2) would place a comparable restraint on savings associations by requiring a notice where a capital distribution would reduce the amount of, or retire any part of the savings association's common or preferred stock, or retire any part of debt instruments such as notes or debentures included in capital under part 567. Under the proposed rule, the reduction of the amount of stock would include the repurchase of outstanding stock as treasury stock. The OTS specifically requests comment on whether a savings association should be required to file a notice for such stock repurchases.

Proposed § 563.143 would include a limited exception to the FDIA-based requirement. If a notice or application is not otherwise required under § 563.143(a) and (b), a savings association would not be required to file if the savings association is making a regular payment under a debt instrument approved by the OTS under 12 CFR 563.81.

Under the third criterion, a savings association would be required to file a notice if the proposed distribution violates a prohibition contained in any applicable statute, regulation, or agreement between the savings association and the OTS (or the FDIC), or a condition imposed on the savings association in an OTS-approved application or notice.

Finally, under § 563.143(b)(4), a savings association that is a subsidiary of a savings and loan holding company would be required to file a notice, unless an application is otherwise required. This provision implements 12 U.S.C. 1467a(f), which requires such savings associations to notify OTS at least 30 days before the proposed declaration of any dividend.

If neither the savings association nor the proposed capital distribution meet any of the criteria listed in § 563.143(a) or (b), the savings association is not required to file a notice or an application before making a distribution. *See* proposed § 563.143(c).

Proposed § 563.144—How Do I File With the OTS?

Proposed § 563.144 contains the requirements governing the filing of capital distribution notices or applications with the OTS. Under this proposed section, an application or notice must be in narrative form, include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution, and demonstrate compliance with § 563.146, which addresses the criteria for OTS disapproval of notices and denial of applications. In addition, an application must demonstrate compliance with OTS approval standards at § 516.3(b)(2). *See* proposed § 563.144(a).

Current § 563.134(c) permits savings associations to seek approval or provide notice by submitting schedules of proposed capital distributions. Proposed § 563.144(b) would permit a savings association to file schedules of capital distributions it proposes to make over a period not to exceed 12 months.

All notices and applications must be filed at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by the savings association's board of directors. *See* proposed § 563.144(c). All notices and applications would be processed under 12 CFR §§ 516.1 through 516.3.

Proposed § 563.145—May I Combine My Notice or Application With Other Notices or Applications?

Consistent with the current regulation, the proposed rule would allow a savings association to combine a capital distribution notice or application with any related notice or application filed with the OTS under any regulation. To combine notices, the association must state that the related notice or application is intended to serve as a notice or application under the capital distributions regulation. Additionally, the savings association must submit the combined notice or application in a timely manner.

Proposed § 563.146—Will the OTS Permit My Capital Distribution?

Section 563.146 would state that the OTS may disapprove a notice or deny an application submitted under § 563.143 under three circumstances. First, § 563.146(a) would state that the OTS may disapprove a notice or deny an application if, following the distribution, the savings association would be undercapitalized. This provision reflects the PCA prohibition at 12 U.S.C. 1831o(d)(1)(B). If the savings association would be undercapitalized, the OTS would determine whether the capital distribution falls within the limited statutory exception permitting the OTS, in consultation with the FDIC, to approve an undercapitalized institution's repurchase, redemption, retirement or acquisition of shares or ownership interests. To be exempted, the distribution must be made in connection with the issuance of additional shares in at least an equivalent amount, and must reduce the institution's financial obligations or otherwise improve its financial condition. 12 U.S.C. 1831o(d)(1)(B).

Second, under proposed § 563.146(b) the OTS may disapprove a notice or deny an application where the OTS determines that the proposed capital distribution raises safety or soundness concerns. The OTS will consider the amount of the capital distribution in determining whether the distribution raises safety and soundness concerns. Under today's proposal, a savings association would not be required to file a notice or application for a cash distribution if, in addition to satisfying other regulatory requirements, the total

[20] Under 12 U.S.C. 60 and 12 CFR 5.64(1997), a national bank may not declare a dividend if the total amount of all dividends (common and preferred), including the proposed dividend, declared by the national bank in any calendar year exceeds the total of the national bank's retained net income of that year to date, combined with its retained net income of the preceding two years, unless the dividend is approved by the OCC.

[21] 12 U.S.C. 1831o(d)(1)(A).

[22] A similar, but not identical, provision applies to national banks. *See* 12 U.S.C. 56 and 59.

amount of all distributions (including the proposed distributions) for the applicable calendar year does not exceed net income for that year to date plus the retained net income for the preceding two years. The OTS may permit a capital distribution in excess of this standard upon application, but may deny an application for such a distribution if it raises safety and soundness concerns.

Finally, § 563.146(c) would retain the existing provision that a savings association may not make a distribution that violates a prohibition contained in any statute, regulation, or agreement between the savings association and the OTS or the FDIC or condition imposed on the savings association in an OTS-approved application or notice.[23] If there is such a violation, the OTS would determine whether it may and should permit the capital distribution notwithstanding the prohibition.

Miscellaneous

The current regulation at 12 CFR 563.134(e)(2) and (3) addresses the effect of the capital distributions rule on more stringent and less stringent provisions or conditions imposed in written agreements between a savings association and the OTS, or imposed on a savings association in an OTS-approved application or notice. The OTS believes that these provisions would have a limited application, and has not included them in the proposed rule. The OTS specifically requests comments on whether these provisions should be retained in the final rule.

The proposed rule includes appropriate revisions modifying cross citations to existing § 563.134.

IV. Executive Order 12866

The Director of the OTS has determined that this proposed regulation does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposal merely conforms the capital distributions regulation to standards already in place for all institutions as a result of PCA and makes other revisions designed to lower paperwork and other burdens on savings associations.

[23] See current 12 CFR 563.134(b)(6) (1997).

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. As discussed in the preamble, the proposal merely conforms the capital distributions regulation to standards already in place for all institutions as a result of PCA and makes other revisions designed to lower paperwork and other burdens on savings associations. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Paperwork Reduction Act

OTS invites comment on:

(1) Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(2) The accuracy of OTS's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this proposal have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0059), Washington, D.C. 20503, with copies to the Regulations and Legislation Division (1550–0059), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

The collection of information requirements in this proposed rule are found in 12 CFR 563.143–563.146. OTS requires this information for the proper supervision of capital distributions by Federal savings associations. The likely respondents/recordkeepers are Federal savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 4.

Estimated number of respondents: 688.

Estimated total annual reporting and recordkeeping burden: 2752.

Start up costs to respondents: none.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Security bonds.

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend chapter V, title 12 of the Code of Federal Regulations as set forth below.

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

§ 563.134 [Removed]

2. Section 563.134 is removed.

3. Subpart E is revised to read as follows:

Subpart E—Capital Distributions

Sec.

563.140 What does this subpart cover?
563.141 What is a capital distribution?
563.142 What other definitions apply to this subpart?
563.143 Must I file with the OTS?
563.144 How do I file with the OTS?
563.145 May I combine my notice or application with other notices or applications?
563.146 Will the OTS permit my capital distribution?

Subpart E—Capital Distributions

§ 563.140 What does this subpart cover?

This subpart applies to all capital distributions made by a savings association (''you'').

§ 563.141 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a mutual savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the OTS determines is not a distribution for the purposes of this section.

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under § 567.5 of this chapter, and any extension of credit to finance an affiliate's acquisition of your shares or interests.

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes a payment to shareholders of an association or shareholders of a holding company by an acquiring association to acquire ownership of the association, other than a distribution of shares.

(d) Any transaction that the OTS or the Corporation determines, by order or regulation, to be in substance a distribution of capital.

§ 563.142 What other definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means any company that controls, is controlled by, or is under common control with another company. The terms ''control'' and ''company'' have the meaning given to those terms in 12 U.S.C. 1841(a)(2) and (b) respectively.

Capital means total capital as defined under § 567.5(c) of this chapter.

Net income means your net income computed in accordance with generally accepted accounting principles.

Retained net income means your net income for a specified period less total capital distributions declared in that period.

Shares means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term ''share'' also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

§ 563.143 Must I file with the OTS?

Whether and what you must file with the OTS depends on whether you and your proposed capital distribution fall within certain criteria.

(a) *Application required.*

If:	Then you:
(1) You are not eligible for expedited treatment under § 516.3(a) of this chapter.	Must file an application with the OTS.
(2) The total amount of all of your capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds your net income for that year to date plus your retained net income for the preceding two years.	Must file an application with the OTS.

(b) *Notice required.*

If you are not required to file an application under paragraph (a) of this section, but:	Then you:
(1) You will not be at least adequately capitalized, as set forth in § 565.4(b)(2) of this chapter.	Must file a notice with the OTS.
(2) Your proposed capital distribution would reduce the amount of or retire any part of your common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under part 567 of this chapter (other than regular payments required under a debt instrument approved under § 563.181).	Must file a notice with the OTS.
(3) Your proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between you and the OTS (or the Corporation, or violate a condition imposed on you in an OTS-approved application or notice.	Must file a notice with the OTS.
(4) You are a subsidiary of a savings and loan holding company.	Must file a notice with the OTS.

(c) *No prior notice required.*

If neither you nor your proposed capital distribution meet any of the criteria listed in paragraphs (a) and (b) of this section.	Then you do not need to file a notice or an application with the OTS before making a capital distribution.

§ 563.144 How do I file with the OTS?

(a) *Contents.* Your notice or application must:

(1) Be in narrative form.

(2) Include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution.

(3) Demonstrate compliance with § 563.146. If you have filed an application, your application must also demonstrate compliance with the standards of § 516.3(b)(2) of this chapter.

(b) *Schedules.* Your notice or application may include a schedule proposing capital distributions over a specified period, not to exceed 12 months.

(c) *Timing.* You must file your notice or application at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by your board of directors.

§ 563.145 May I combine my notice or application with other notices or applications?

Yes. You may combine the notice or application required under § 563.143 with any related notice or application filed with the OTS under any provision of this chapter, if:

(a) You state that the related notice or application is intended to serve as a notice or application under this subpart; and

(b) You submit the notice or application in a timely manner.

§ 563.146 Will the OTS permit my capital distribution?

The OTS may disapprove your notice or deny your application filed under § 563.143, if the OTS makes any of the following determinations.

(a) You will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in § 565.4(b) of this chapter, following the capital distribution. If so, the OTS will determine if your capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

(b) Your proposed capital distribution raises safety or soundness concerns.

(c) Your proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between you and the OTS (or the Corporation), or a condition imposed on you in an OTS-approved application or notice. If so, the OTS will determine whether it may permit your capital distribution notwithstanding the prohibition or condition.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

4. The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

§ 563b.3 [Amended]

5. Section 563b.3(g)(2) is amended by removing the phrase ''§ 563.134'', and by adding in lieu thereof the phrase ''§§ 563.140–563.146''.

Dated: December 12, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–205 Filed 1–6–98; 8:45 am]

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FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 7, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tart cherries grown in Michigan et al.; published 1-6-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

National low emission vehicle program; voluntary standards; State commitments; published 1-7-98

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Aliens, inadmissibility, nonimmigrants, passports, and visas; place of application; published 1-7-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Raisins produced from grapes grown in California; comments due by 1-12-98; published 11-13-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands and Gulf of Alaska groundfish; comments due by 1-12-98; published 11-12-97

Bering Sea and Aleutian Islands groundfish; comments due by 1-14-98; published 12-15-97

Bering Sea and Aleutian Islands groundfish; correction; comments due by 1-14-98; published 12-23-97

Gulf of Alaska groundfish; comments due by 1-14-98; published 12-15-97

Pacific halibut; comments due by 1-14-98; published 12-15-97

West States and Western Pacific fisheries—

Northern anchovy; comments due by 1-16-98; published 12-17-97

Marine mammals:

Commercial fishing authorizations—

Take reduction plan and emergency regulations; hearings; comments due by 1-14-98; published 12-12-97

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program; reimbursement; comments due by 1-13-98; published 11-14-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

North Dakota; comments due by 1-14-98; published 12-15-97

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 1-16-98; published 12-17-97

Colorado; correction; comments due by 1-16-98; published 12-17-97

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Texas; comments due by 1-16-98; published 12-17-97

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Radio stations; table of assignments:

Alabama et al.; comments due by 1-12-98; published 12-2-97

Television broadcasting:

Cable television systems—

Inside wiring; comments due by 1-13-98; published 11-14-97

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:

Federal Home Loan Bank bylaws; approval authority; comments due by 1-12-98; published 12-11-97

FEDERAL RESERVE SYSTEM

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Weekly reporters requirements; move to lagged reserve maintenance system; comments due by 1-12-98; published 11-12-97

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Fish and Wildlife Service

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Gray Wolf; comments due by 1-12-98; published 12-11-97

INTERIOR DEPARTMENT

National Park Service

Special regulations:

Delaware Water Gap National Recreation Area; designation of bicycle routes; comments due by 1-12-98; published 11-13-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Oklahoma; comments due by 1-14-98; published 12-15-97

Surface coal mining and reclamation operations:

Ownership and control, permit application process, and improvidently issued permits; comments due by 1-16-98; published 11-26-97

LABOR DEPARTMENT

Mine Safety and Health Administration

Program policy letters:

Occupational illnesses of miners, including retired or inactive miners; reporting requirements; comments due by 1-12-98; published 11-12-97

NATIONAL CREDIT UNION ADMINISTRATION

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Internal Revenue Service

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TREASURY DEPARTMENT

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